

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

August 5, 2008

7:30 p.m.

Present at the 7:30 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Peggy Brown
Angela Dressel
Mary Lou McDowell
Rob Osborne
Kass Sheedy

Staff Present: Maureen Feeney Roser, Interim Planning Director

Chairman James Bowman called the Planning Commission meeting to order at 7:30 p.m. If there are any of you in the public who wish to address any of the items on the agenda tonight, I am going to ask that you obtain a request form from the end of the counter, fill it out please, pass it to our secretary who is going to help us keep track of your comments for the minutes of the meeting tonight. And, also, because of the number of items and the potential for extended comment on agenda items, I am going to limit comments from the public to no more than ten minutes. If it starts getting real late, I will exercise the Chair's prerogative to cut that to even less. So, I am going to ask all of you to stay on subject if you come up to comment; and if someone else has already addressed a particular area, please don't get repetitive because it could be a long night.

1. THE MINUTES OF THE JULY 1, 2008 PLANNING COMMISSION MEETING.

MOTION BY BEGLEITER, SECONDED BY OSBORNE, TO ACCEPT THE MINUTES OF THE JULY 1, 2008 PLANNING COMMISSION MEETING AS RECEIVED.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,
OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF THE MINOR SUBDIVISION AND SPECIAL USE PERMIT FOR A DRIVE-THROUGH FACILITY FOR THE LOUVIERS CREDIT UNION ON THE 1.059 ACRE PROPERTY AT THE SOUTHEASTERN CORNER OF ELKTON AND APPLE ROADS.

Interim Planning Director Maureen Feeney Roser summarized her report to the Planning Commission which reads as follows:

"On May 22, 2008, the Planning and Development Department received an application from Louviers Federal Credit Union for the minor subdivision of the 1.0592 property located at the intersection of Elkton and Apple Roads to construct a two-story bank facility totaling 10,911 square feet, with a drive-through service facility. The parcel lines between the properties on the site will be removed through this minor subdivision.

The applicants have also applied for the required special use permit for the drive-through facility. Please see the attached CDA Engineering, Inc., minor subdivision and special use permit plan; and supporting materials.

The Planning and Development Department's report on the Louviers Federal Credit Union project follows:

Project Description and Related Data

1. Location:

Located at the intersection of Elkton and Apple Roads; on the south side of Elkton Road, east of Apple Road.

2. Size:

1.0592 acres

3. Existing Land Use:

The property is currently vacant. Previously, it housed a gas station on the corner of Elkton and Apple Roads and Friendly Family Restaurant to the northeast of the gas station.

4. Physical Condition of the Site:

The Louviers Federal Credit Union site is currently vacant with some grass covered areas; the bulk of the site, however, is covered with impervious paving from previous uses.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, the Louviers Federal Credit Union site consists of Matapeake Silt Loam soil [MeB2]. The Natural Resources Conservation Service indicates that this is developed soil for which no development limitations for the use proposed are indicated.

5. Planning and Zoning:

The Louviers Federal Credit Union proposal is for property currently zoned BC. BC is a general commercial zone which permits the following:

- A. Auction
- B. Automobile, truck, rentals, retail, and wholesale sales with special requirements
- C. Crating service
- D. Frozen food locker
- E. Ice Manufacture
- F. Sign painting and manufacture
- G. Warehousing with special requirements
- H. Wholesale sales with special requirements
- I. Photo developing and finishing
- J. Veterinary hospital
- K. Cleaning and dyeing plants
- L. Commercial laundries/dry cleaners
- M. Laundromats
- N. Outdoor commercial recreational facilities with special requirements
- O. Swimming club, private or commercial
- P. Social club, fraternal, social service, union and civic organizations, except on ground floor locations
- Q. Studio for artists, designers, photographers, musicians, and sculptors
- R. Offices for professional services and administrative activities
- S. Personal service establishments
- T. Finance institutions, banks, loan companies

- U. Retail and specialty stores
- V. Repair and servicing, indoor and off-site, of any article for sale, which is permitted in this district
- W. Related indoor storage facilities are permitted as an accessory use to any of the permitted uses in this district
- X. Accessory uses and accessory buildings
- Y. Restaurants, taverns, bakery-restaurants, and delicatessens
- Z. Public parking garage and parking lot
 - a. Parking off-street
 - b. Public transportation facilities, including bus or transit stops for the loading and unloading of passengers; station and depots
 - c. Street, right-of-way
 - d. Utility transmission and distribution lines
 - e. Water tower, water reservoir, water storage tank, pumping station, and sewer
 - f. Retail food stores up to 5,000 square feet in maximum floor area, limited to bakeries confectionery, candy, gourmet shops, small convenience grocery, and meat sales facilities. Goods produced on the premises shall be sold only on the premises

BC zoning also permits, with a Council granted Special Use Permit, the following:

- A. Automobile repair and/or service station, paint and/or body shop with special requirements
- B. Self-service car wash establishment with special requirements
- C. Automobile/motor vehicle repair with special requirements
- D. Automatic car wash establishment with special requirements
- E. Used car lots
- F. Retail food stores
- G. Fast-food and cafeteria style restaurants with special requirements
- H. Drive-in restaurants, with special requirements
- I. Drive-in and curb service for other than eating establishments.
- J. Substation, electric, gas, and telephone central office with special requirements
- K. Tower, broadcasting and telecommunications with special requirements
- L. Police and fire stations
- M. Library, museum and art gallery
- N. Church, or other place of worship, seminary or convent, parish house, or Sunday school building
- O. Instructional, business or trade schools
- P. Motels and hotels
- Q. Commercial indoor recreation and indoor theaters
- R. Adult bookstore/adult entertainment center with special requirements
- S. Restaurants with alcoholic beverages

Please note that regarding the applicable BC zoning area requirements, other than for the 50 ft. minimum distance between a commercial building and a residential district requirement and the 50 ft. minimum distance between a commercial access driveway and a residential district requirement, for which the applicants were granted variances at the July 17, 2008 Board of Adjustment meeting, the Louviers Federal Credit Union project meets all applicable Zoning Code area requirements.

In terms of adjoining properties, the lands immediately adjacent to the south of the site fronting on Winslow Road are zoned RS and contain single family residential homes. Adjacent to the northeast is an office building owned by Market East Investments, which is also zoned BC. To the southwest across Apple Road is the BC zoned Park 'N' Shop Shopping Center, and directly across Elkton Road from the site are commercially zoned properties, including a 7-11, a single family home and a vacant lot zoned BN, a vacant BC zoned building (formerly Chopsticks Restaurant), and the BB zoned Madeline Court mixed use building.

Regarding comprehensive planning, the Newark Comprehensive Plan calls for, "commercial (auto-oriented)" uses, in the "Planning Section" within which the

Louviers Federal Credit Union property is located. The Plan defines commercial (auto-oriented) as, “shopping and commercial uses of all types including retail facilities for buying and selling of goods and services, administrative and professional offices, professional services establishments, eating establishments, and shopping centers ordinarily included in general business districts with customers, to a large extent, relying on the automobile to patronize these businesses.” Also regarding comprehensive planning, the Louviers Credit Union site is located within the boundaries of “downtown Newark” part of Downtown District 6. The Plan calls for “first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment,” in this district.

Departmental Comments

The City’s Management, Planning and Development and Operating Departments have reviewed the Louviers Federal Credit Union development project and have the comments provided below. If necessary, the plan should be revised as indicated prior to its review by City Council.

1. The Planning and Development Department indicates that:

- The plan should be revised to delete reference to “preliminary” record minor subdivision plan in the drawing title block and in the issue/revision block.
- The commercial use on the site corresponds to development in the area. Moreover, as noted above, the Louviers Federal Credit Union plan corresponds to the City’s land use guidelines for this location in the Comprehensive Plan.
- The subdivision plan should show a subdivision identification sign.
- Although the applicant is not required by Code through the minor subdivision process to provide architectural renderings of what the facility might look like, the drawings of the proposed architectural design have been submitted and therefore, as a condition of subdivision approval, the Planning Commission might recommend that the proposed structure be consistent on all building elevations visible from public ways. In addition, storage areas, mechanical and utility hardware should be screened from view from all public ways and nearby properties in a manner consistent with the architectural design.
- All construction must be coordinated with DelDOT Contract #24-44-01 (Elkton Road Improvements).

2. The Building Department notes that:

- The building should be fully sprinklered.
- The underground fire service water line exceeds 100 ft. and, therefore, the contractor will have to contact the City of Newark’s Water and Wastewater Department about the installation of a backflow preventer in a vault outside the building for the six inch fire protection line.
- The plan should show the location of a Fire Department connection (for pump trucks to hook up directly to the building) on the building.

3. The Electric Department indicates:

- Electric service is available from Apple Road.
- The developer must pay all costs for the relocation of the electric utility pole in conflict with the proposed Apple Road entrance.

- An open utility easement must be granted for the entire site and listed on the plan.
- No trees growing over 18 ft. in height at maturity can be planted along Apple Road and Elkton Road.
- A small pine tree in conflict with the relocated utility pole along Apple Road property line must be removed by the developer.
- The height of the building is necessary to ensure adequate clearances for the utility poles along Elkton Road.

4. The Parks and Recreation Department indicates the following:

- The landscape plan general notes should use wording from the Landscape Code (Article XXV, Section 32-89).
- There is an existing wooden stockade fence in the rear of the property that is in poor condition. If the fence is on the property to be developed, it should be replaced with a new solid fence.
- Change eight (8) of the Colorado Spruce on the south side of the parking lot to Crypponeria and change eight (8) Spring Snow Crabapple trees along Apple Road to four (4) Linden trees. This to is an effort to provide more diversity to the project's landscaping.

5. The Water and Wastewater Department indicates that:

- The old water and sewer services need to be terminated.
- The cost of the water meter and remote reader will be the responsibility of the developer.
- Additional comments will be made on construction improvement plans.

6. The Public Works Department indicates the following:

- Preliminary stormwater management reports with infiltration tests will be required. Evaluate if any type of BMP treatment can be utilized on the west side of the site.
- Information should be provided on the proposed type of underground system. While there may not be a requirement for stormwater quantity control due to the existing conditions, the higher storm events of up to the 100 year storm will need to be managed. There is some concern regarding utilizing infiltration solely to manage all the storm events. Maintenance of the system will be extremely important. A safety factor for storage and extra inlet capacity will be required.
- Verify underground gas tanks were removed as per DNREC's guidelines, and that there are no outstanding environmental issues at the previous gas station site.
- The plan should show sidewalk locations within both street rights-of-way and ADA compliant handicapped ramps at both entrances.
- Work along Elkton Road should be coordinated with the proposed DelDOT improvements including the handicapped ramp at the intersection of Apple and Elkton Roads which will have to be removed and replaced to current ADA requirements.

- An entrance plan will be required from DelDOT for the entrance onto Elkton Road.
- The plan should show the guy wire off the power pole adjacent to the existing catch basin on Elkton Road.
- Verify the location of the traffic signal pole and show traffic signal box adjacent to it.
- Show existing curb cut locations and note that curbs and sidewalks at these locations to be raised to full height.
- Note the type and location of signage for the entrance onto Apple Road. One-way arrow signs should be shown to keep cars from pulling to the exit.

Recommendation

The Planning and Development Department believes that the proposed minor subdivision conforms to land use guidelines of the Newark Comprehensive Plan. In addition, the plan corresponds to the development pattern in the immediate neighborhood of the site on Elkton Road. The Department also believes that, with the Departmental suggestions above, the Louviers Federal Credit Union minor subdivision will not have a negative impact on adjoining and nearby properties.

The Planning and Development Department, therefore, suggests **that the Planning Commission make the following recommendation to City Council:**

- A. That City Council approve the minor subdivision of the 1.0592 acre parcel at the southeast intersection of Elkton and Apple Roads as shown on the attached CDA Engineering, Inc., plan dated May 20, 2008, with the City Departmental conditions.**
- B. That City Council approve the special use permit for the drive-through facility associated with a bank in a BC District.”**

Ms. Feeney Roser: The applicants are here and I will be happy to answer any questions that the Commission might have for me.

Mr. James Bowman: Does the Commission have any initial questions for Maureen?

Ms. Dressel: On page 5, the Electric Department, the last bullet, it says, “The height of the building is necessary to ensure adequate clearances for the utility poles along Elkton Road.” Could you explain that? Is this a different height?

Ms. Feeney Roser: That refers to the requirements for the heavy duty electric lines. A building has to be so many feet away from those lines by law. If the building is a certain height and is parallel to those wires, they have to make sure that the distance between them is adequate.

Ms. Dressel: So, where the wires are going to be coming into the building is going to be parallel to where the . . .

Ms. Feeney Roser: This is the main electric line that runs along Elkton Road, so the building will be parallel to them, and they have to make sure that there is enough room separating the two.

Mr. Begleiter: So, it is actually a question of height and placement of the building. If the building was another story higher, but it was too close to the wires, the building would have to be moved back.

Ms. Feeney Roser: Yes.

Mr. Begleiter: Maybe we should say the height and placement of the building must ensure adequate clearances.

Mr. Bowman: Are there any other questions for Maureen? If not, the applicants are here and wish to speak. Please step to the microphone. Please state your name and address for each person that steps up to the microphone; and, if you need to walk around you can just take the microphone with you. Make sure you talk into the microphone, please.

[Secretary's note: The applicants, Planning Commission, and public referred to visuals brought by the applicants for their presentation to the Planning Commission].

Mr. Bob Walls: I am here representing the Louviers Federal Credit Union in this minor subdivision request. I currently live in Magnolia, Delaware. Our office is 2612 Kirkwood Highway here in Newark. We also have two branch offices in the City of Wilmington – one on Maryland Avenue and the other at 10th and Orange Streets. Across the street we have an office on a restricted site – the Stine Haskell Research Lab.

We are trying to build a new two-story facility which will become our headquarters. The downstairs will be a fully functioning branch office with an ATM and drive-up window. Upstairs we will move all of our back office staff, our accounting staff, people like me over here to this facility. We will still retain our branch office on Kirkwood Highway at Meadowood II Shopping Center. We anticipate being very active here in Newark, in the community. We have built a beautiful facility on paper, as you can see, and we hope to be able to build it on the ground out here soon. But, I am here tonight, and I have our civil engineer with us and two of the principals of our design firm. I can introduce them if you would like.

Mr. Bowman: Do you want to have them make comments?

Mr. Walls: I know Colm will. He is our civil engineer. I am available for questions now or at any time.

Mr. Bowman: Why don't you let them go through their entire presentation and then we will bring it back here for questions, and then questions from the public.

Mr. Colm DeAscanis: I am the president of CDA Engineering, the civil engineering firm responsible for designing the plans. I live at 1419 N. Clayton Street in Wilmington. Our firm is located at 6 Larch Avenue in Newport, Delaware.

We did a preliminary submission back in late May (May 22, 2008) and received departmental comments and comments from DelDOT on June 12th. We went in front of the Board of Adjustment on July 17th. They awarded the requested variances. The project is three parcels. It is the old Friendly's right across the street, and the gas station. We are subdividing all three to combine into one major parcel to put the new facility. We have tried to work closely with the City and started working with DelDOT in January to coordinate with DelDOT's plans for Apple Road and Elkton Road. We have abandoned three of the four entrance/exit locations off Elkton Road and retained the one furthest from the intersection, which we think will improve safety along Elkton Road. We have provided an exit only off of Apple Road. We are continuing to work with everyone. We are here tonight requesting approval of the subdivision plan. We have addressed many of the comments and we are continuing to work as the project goes forward. Some of the comments regarding storm water management, we have done infiltration testing since our last submission, and I have made progress with that design to go beyond infiltration and do peak rate runoff and peak volume control. We have worked with moving the one utility pole that was in question. Things like landscape screening, we went out and did some more survey work to get some more detail to figure out exactly what is there and what the screening is, in relation to the property line. So, we are trying to work closely with the City and now we are ready to take this job to the detail design, if everything goes okay.

Mr. Bowman: We will bring it back to the members of the Commission. Does anyone have any questions for the developer?

Mr. Begleiter: Mr. Walls, if I may ask you, the proposal included the relocation of that utility pole that is right in the middle of the proposed driveway. Have you considered, or discussed with the City at all, the possibility of proposing to bury that cable all the way to the corner so that rather than relocate a pole you eliminate a pole?

Mr. Walls: I am going to refer this question to our engineer, if I may.

Mr. Begleiter: Let me just include in the question a reference to a most recent bank proposal that we had in Newark at another location, the owners made a very forthcoming proposal that included some improvements to adjacent civic utilities that was very favorably received by both the City Council and the Commission.

Mr. Ascanis: We are definitely okay with bringing in underground connection to the building, and we will work with the City's department about actually extending down Apple Road with underground.

Mr. Begleiter: Is that what that pole does? Is it to provide service to that site?

Mr. Ascanis: We were going to take service going along Apple Road. We are willing to do overhead or underground, either way. In terms of what we do down Apple Road, we will have discussions and talk with the City. That is definitely something we will entertain. We did provide, on the renderings, just how the utility poles look. We have that exhibit here tonight if it is helpful.

Mr. Begleiter: I can see it. Thank you. And, I would urge you to have those discussions with the City to at least explore the viability of doing that.

Regarding the egress and access to the site through the two driveways you made reference to, help me understand, there are two parallel driveways parallel to the building. One of them goes underneath the building and the other one is adjacent to the building on the east side of the building. What is the function of the driveway that is not underneath the building? I know the function underneath is to drive in and conduct your banking business and then you would pull out of that driveway and, presumably, you would exit through the exit. What is the function of the other part of that driveway if there is no access from Apple Road?

Mr. Ascanis: It allows flexibility on the site. If someone goes through the drive-through and something happens or they want to go into the bank, they can stay inside the parcel and park, and actually go in the bank. Originally, we did have full access on Apple Road that was kind of critical, but it was something that we had to work out with DeIDOT. But, we still feel that it is necessary. It also gives access for fire service and it gives access for people exiting who park and go into the bank and still exit on Apple Road, if that makes more sense rather than having to get back on Elkton Road and weave back around and go down Apple.

Mr. Begleiter: So, that is a two-way driveway.

Mr. Ascanis: Ideally, it would serve an ingress, but it doesn't. It is still necessary and we discussed that, and we do need that.

Mr. Begleiter: So, you will have cars exiting there and cars attempting to make a U-turn crossing the exiting traffic.

Mr. Ascanis: We have a stop bar there. That is not going to be the norm, but if someone needs to do that, one out of hundred chances, rather than having to get back on the road, it is something they can do.

Mr. Begleiter: You are not hoping that someday a different Council might say go ahead and do the ingress from Apple Road. That is not the purpose of that.

Mr. Ascanis: I know DelDOT too well. We did try. It will serve a purpose. There will not be as much traffic as you would normally get. I still think it is good to have external access on both Apple Road and Elkton Road.

Mr. Begleiter: Still sticking with that question of the Apple Road Driveway, your two “do not enter” signs look to me like they are about half way up the hill. It is a very steep hill going up there. I think if you were to drive in that driveway, which, of course, no one will under the circumstances, but, if you were to drive in there accidentally, you wouldn’t actually be able to see a car sitting at the top of the hill about to come over the edge of the hill. I am a little concerned that having the “do not enter” signs half way up the hill would potentially put a car in the situation of not seeing the signs when it turned into the driveway. So, I would at least urge you, and may make this a recommendation at the end, to place the signs at the very entrance of the driveway, and perhaps, even to have a sign on Apple Road facing both directions that say no entry into driveway or something pretty explicit so that you don’t find a car unable to back out again because traffic is coming up Apple toward Elkton Road.

Mr. Ascanis: That is definitely something we will do. The actual locations were specified by DelDOT consultants. I was thinking that maybe we could work with grading to make that work, but I would like that recommendation so I could go back to DelDOT and say, “Can we put it closer to Apple Road.” They were looking at it in relation to the right-of-way line and the permanent easement, but they weren’t necessarily taking into account the grading. They will, at the entrance permit stage, get really detailed. I agree with you.

Mr. Begleiter: I am not a traffic expert and I certainly would defer to the experts who are, but I drive a lot, and I can see somebody pulling in there and being in that situation.

Mr. Ascanis: We will lessen that slope somewhat, but there will still be a slope there.

Mr. Begleiter: Banking businesses are daytime businesses. They are not nighttime businesses. I don’t know whether you are planning to have 24 hour service there or anything like that. So, presumably, there would be some lighting for evening hours or late afternoon hours in the wintertime, but what I am getting at is, I would like to see the bank voluntarily set up the lighting in such a way that it doesn’t shine into the adjacent residential neighborhood, which is literally down the hill, right over the property line.

Mr. Wall: Yes sir, we have already decided that the lighting will face away from the residential area out into the parking lot for safety purposes. It doesn’t do any good to shine into somebody’s back yard.

Ms. Dressel: I have a question about the Apple Road exit, again, only because I am very familiar with, on Paper Mill Road where there is a do not enter and everybody does a U-turn and makes that illegal left. Is there anything that you are planning to do on Apple Road to prevent people from turning in there as an entrance as opposed to just using it as an exit?

Mr. Ascanis: That is something we will work with DelDOT on. We originally had the right in/right out coming in with the median isle and separating the two lanes, but that doesn’t work with this. This is the configuration they gave us for preliminary, but we will work that out. When we get to the detail design phase, they are going to make sure that that is not a possibility. We will do whatever they make us do, and we will offer suggestions that we think will work. The goal was to have this work with Apple Road the way it is today, and when they eventually do make the improvements it will work with the future expansion as well. The original comment from DelDOT was with the right in/right out. I have discussed it with them since then. They came up with this compromise design, but we will add site features that will facilitate traffic and prevent unsafe movements.

Ms. Dressel: One suggestion would be to have a triangular island in there to, hopefully, prevent people from making those illegal turns in so that it would just be a right turn out,

or that they could go into the left lane but that it would be angled such that people would, hopefully, not be able to turn in there.

Mr. Ascanis: I will talk to DelDOT about that. When you have the right in/right out, you do it with median island, but typically just having the exit, I will see what works best and what makes sense. We will review that with the City Planning to make sure that it doesn't just meet DelDOT's concerns, but also the City.

Ms. Peggy Brown: There is about 36 ft.+ behind the building, and it looks like it is pretty close to the property line behind it. Does that fence actually belong to your property or does it belong to the neighbors?

Mr. Ascanis: The landscaping and the fencing belong to us on our site.

Ms. Brown: How are you going to provide nighttime security so that you don't have loitering and hanging out, because you can't really see that except from Apple Road?

Mr. Ascanis: The lighting will be a big part of that in prevention.

Ms. Brown: The issue is if you are going provide enough light to prevent loitering, then how do you keep it from bothering the neighbors?

Mr. Ascanis: We will shine it at the building. They have illumination plots which can show the foot candles, and we can provide that to the City for the lighting. There are ways to direct the light down and towards the building where you have zero foot candles leaving your parcel line, but still provide adequate lighting to prevent those kinds of things. Being up near Apple and Elkton Road, it is wide open. Our goal is to provide a screen for the residential parcels but, still, the bank needs to keep people from loitering. We will light it in such a way that it lights the parking lot, the building and areas around there, but doesn't light behind.

Ms. Kass Sheedy: Is the Apple Road exit going to be a right and left-hand turn exit?

Mr. Ascanis: Right now it is a full exit.

Ms. Sheedy: I am a little concerned about left-hand turns onto Apple Road. There is a lot of foot traffic in that area. It is not directly opposite, but it is fairly close to the entrance/exit from Park & Shop, which gets a lot of traffic. During rush-hour, the traffic that comes across Elkton Road and down Apple Road is pretty heavy. It is also pretty heavy the other way. There are cars turning off Elkton Road. Have you looked at the safety issues associated with cars trying to make a left turn onto Apple Road coming out of that exit?

Mr. Ascanis: Originally, we had the four entrances off Elkton Road and they have knocked us down to one, so we need to have dual access on the site. We tried to keep it as far as possible from Apple Road. That was part of the variance balance – to not get too close to the residential parcel but keep as far away from the intersection, because the further away it is the safer it is. So, both of our exit and entrance locations are at the extreme ends of our site. We are limited by the site geometry. It is very squat. We got as far back as we could. We do feel the majority of the traffic will be on Elkton Road, but for people who need to get onto Apple Road, it also prevents them from getting onto Elkton, turning westbound, turning left. So, we feel that there may be some issues there that we have to work out, but it prevents bringing traffic that is going to get to Apple Road eventually anyway from doing extra movements.

Ms. Sheedy: I certainly see the issue with people going up Elkton Road and then making a U-turn, which many people do. I just have visions of someone making a left turn out of Park & Shop and someone making a left turn out of the bank.

Ms. Mary Lou McDowell: Or someone going straight across from the bank into Park & Shop.

Ms. Sheedy: If that was made a right turn only exit, one of the things that could happen to address the issues that have been raised about people accidentally or conveniently accidentally using the exit for an entrance is that the road could be curved to make a right turn only exit, and that would provide some blockage for people who might want to turn up the out ramp.

Mr. Ascanis: That was kind of our feeling early on with the right in/right out. It is one of those deals where it is critical for the bank to have the access. Ideally, the more accesses we can have is very helpful to the bank. It was a fair compromise with DelDOT at the time. This is preliminary. DelDOT is going to look at this in relation with the overall. They have done traffic studies all down Elkton and Apple Roads with turning movements. We gave them trip generations with peak hours and daily traffic for our site. They have it for the other areas as part of their overall study. We will make sure it is coordinated. If they won't let us have it, we won't have it.

Ms. Sheedy: I understand the need for it because having people make a U-turn on Elkton Road may be a worse problem, but I urge you, in the final design, to consider whatever measures can be taken. Believe it or not, there are times in Newark where people go through stop signs. Especially with that being a steep hill, it seems like a potentially dangerous situation. I am not saying that I would recommend making a change, but I would ask you to consider those safety issues in your final design.

Ms. McDowell: The driveway on Elkton Road, is that both an entrance and an exit?

Mr. Ascanis: Yes, and that is the location of the last of the four existing curb cuts.

Ms. McDowell: The one that was over at Friendly's?

Mr. Ascanis: Yes.

Mr. Begleiter: In your site planning for this property, did you consider flipping the building so that the drive-in was on the Elkton Road side – keeping the building in the same footprint and flipping it mirror image? If you did that, you would have people coming in the Elkton Road entrance, driving through the driveway, and then coming around the building in the same direction. You wouldn't have any cross traffic then.

Mr. Ascanis: We did look a number of schemes involving having the drive-through away from the building and having the building rotated, but each one had challenges, of mostly stacking interfering with circulation. We probably had five designs over about six to nine months. This is what we came up with as one that worked best. As with all infill areas you are limited by what you can do. They did go and buy the only three parcels that they could. We made a considerable effort to come up with a design that works best. We feel that this is good because it is currently a paved site that has been vacant for awhile. We are going to improve the stormwater on the site. It is not working right now. We are going to bring something that is attractive. Whenever we do infill development there is good to it, but there is challenge to it. We think this is a very good application for these parcels.

Ms. Sheedy: In the staff discussion there was mention of getting clearances from DNREC relative to the tank removal and existing contamination. What is the status of that?

Mr. Ascanis: They have been removed.

Ms. Sheedy: Whatever soil exceeded DNREC regulations?

(inaudible)

Ms. Sheedy: Was that with DNREC's tank branch? Is that who you dealt with?

Mr. Bowman: If you are going to answer questions, you need to come up and identify yourself.

Mr. Steve Larson: I am with Overton and Associates, 909 Baltimore Blvd., West Minster, Maryland. I don't know the exact agency. We had ECS testing in our investigation. We can get copies of those reports to you, if you need them.

Mr. Bowman: Anything else from the Commission? If not, we have one request to address this item from the public.

Mrs. Jean White: 103 Radcliffe Drive. I have some questions, first of all. Some of them have been answered already. This is just a curiosity question. I wondered if the Louviers Federal Credit Union originally was at the DuPont Louviers site long ago on Paper Mill Road and Possum Park Road.

Mr. Bowman: I can answer that question for you. Yes, it was.

Mrs. Jean White: The question was already answered that the exit is both a right and left turn, and I wondered whether both the entrance and exit on Elkton Road, why that wouldn't just be a right turn out? I guess it is because somebody would want to go straight down Elkton Road rather than turn on Apple. Maybe I am answering my own question. So, it is both a left and right turn out on Elkton Road.

I am interested to know about the underground tanks, whether they had been removed by the Getty Station or whether they were removed by the current developer and whether it was the underground tank, the question that was already asked.

The fence, now that we have heard that the fence is on the property, I want to urge that it not just be a landscape screen but it be a new fence because I think in terms of the security of the residential area beyond where the fence is now that a landscape screen is not enough. People can easily walk through down onto residential property, so I would like to make that a strong recommendation. I know it was covered in a less strong way in the report, because at that time it was not known whether the fence was on this property, but now that it is known, I think one needs the fence and landscape in front of the fence.

Mentioned was that the Comprehensive Plan considers this area auto-oriented, commercialized with getting to by automobiles. This is one thing I would like to change in our Comprehensive Plan that is actually just being considered. I was not able to be at the last meeting, but I had mentioned it at least one of the workshops. Because we are now continuing our downtown all the way down Elkton Road down to Apple Road, and the Elkton Road plan by DelDOT will eventually take what is four lanes and make it two. The idea is to make this much more pedestrian friendly; and, although, automobiles will still come to some of the different businesses, including this one, it is important to make it pedestrian friendly. That is one thing I would like to be changed; and, it brings me to my next point.

I want to oppose the special use permit for the drive-through. I have several different reasons. Drive-throughs encourage idling of cars. In places in California, for example, Davis, California, for over 30 years has had an ordinance against drive-throughs. I feel that in what constitutes our extended downtown, we should not have a drive-through. The second thing is that I do not think it encourages people parking and getting out. 99% of people that use drive-throughs are not the category that they say you need to be – handicapped. There is this pedestrian orientation, there is the idling situation and, also, when I was looking at the site which is 1.06 acres. It is really a pretty large site. The building footprint counting both the first and second floors is 10,000 square feet, so even though the first floor is a little bit small, but you have the overhang, say it is about 5,000 square feet. You have a building that is only occupying about 11% of the whole property. Yet, it is almost all impervious surface by the building or the parking lot and the drives. Yet, you do need the parking to satisfy the number of parking places that are required. As I looked at the plan, I realized there is a fair amount of macadam and driveway that is used for this drive-through, and so I feel that without the drive-through there would be a way to have more green cover. When you look at the percent you think this is pretty good, but when you look at it with a little island there and a little bit around the perimeter, it is pretty lean and totally covered by macadam.

As far as the overhead wires, I would like to see those buried. One of my disappointments is, we have an ordinance that requires street trees – big shade trees around frontages – and if you can't put one shade tree, you have to put two ornamentals. All along Elkton Road and then along Apple, in every case – if you read the landscape plan – they are substituting two ornamentals for one shade tree. I understand the applicant is doing that because they are meeting the requirements. I am not faulting them for that, but if we could bury the cables underground in such a way that the shade trees could be planted a little way from where they are buried, we could end up with a very pretty property with those.

Mr. Bowman: The applicant can address any of Mrs. White's questions that you wish to.

Mr. Walls: I appreciate Mrs. White's concern about the drive-through, but I think you understand, given the nature of our business, people are not going to get out of their cars, especially if it is raining, and come in. A drive-up is a convenience. We are a mobile society. People drive everywhere they go, and they may not live just around the corner in Newark and be able to walk to our new facility. They may be coming from across town. They may be coming from Kirkwood Highway, so for a financial institution a drive-up is a necessity. We have, actually, done the best that we could on this property. We had thought we could put two drive-ups there for stacking purposes to serve four people, but because the size of the lot and the way it is placed – it is not very deep, yet it is wide – we gave that up already. We have a drive-up ATM and a drive-up window for people to use. Believe me folks, it is a financial necessity for a financial institution to have drive-up access. There is just no other way around it. I would ask you to look at your personal banking habits. Do you go to your bank and get out or do you go to the drive-up window. I might offer the same thing for McDonalds, Burger King and all of the fast food restaurants. What kind of a business would they maintain without the drive-up window? While I admire Mrs. White's concern about that, it is an economic necessity for us.

Mr. Bowman: Does anyone else from the public wish to comment? Seeing and hearing none we will bring it back to the Commission.

Ms. Dressel: I would just like to say to Mr. Walls and your engineer, it is a very nice looking rendering that you have given to us and that you have included all the wires, although, we would like to see those buried. If this gets passed, I think it would be an improvement over what has been there in the past.

Mr. Rob Osborne: Mr. Chairman, I would just like to second a couple of the comments I have heard from a couple of the other Commissioners. I think the Apple Road exit has generated a lot of concern and I, too, would be in favor of restricting that to a right turn only out of the Apple Road exit. I am not sure I heard that, but that would be something that I would be in favor of, to just have a right turn instead of left out of the Apple Road exit. I think someone mentioned putting signs on Apple Road that would clearly indicate that turns into that exit aren't permitted.

Ms. Brown: I think it is a beautiful building and you have done a great job and it is a big improvement, but I agree with the other Commissioners about burying the lines. I think that is something that we really ought to explore, not only for aesthetic purposes, but also because Elkton Road is going to be redone. So, I think that is something that you ought to really try to explore. I am sure it will cost more money, but it may be a good benefit to the community.

Mr. Frank Tolomeo: 24 Tyre Avenue. I didn't really come to speak on this, but being an NFPA commercial fire inspector-X, one thing bothers me. You cannot have a drive-through under any part of a building. It can be under a canopy. It can be along side of a building. You name me one place in Newark that a car can pull underneath a structure. It doesn't meet the Fire Code. You can't do it. You ought to look into that before you do any approvals.

Mr. Bowman: The City has reviewed it.

Mr. Tolomeo: The NFPA overrides everything the City says – National Fire Protection Association. You cannot have it under the structure.

Mr. Bowman: Thank you for your point, Mr. Tolomeo.

Mr. Ascania: That is why we have that bypass lane, that two-way – to get access (inaudible) we have that two-way 24 ft. wide lane parallel to the drive-through on the exterior to provide (inaudible) an access for emergency.

Mr. Walls: I would like to address the gentleman's comments about the canopy. The building will be designed to meet all Building Codes both local and nationally. It is fully sprinklered. The architects and engineers are working on that, and it will meet all applicable building codes.

Mr. Bowman: Back to the table for a recommendation.

MOTION BY BEGLEITER, SECONDED BY DRESSEL, THE PLANNING COMMISSION RECOMMENDS:

A. THAT CITY COUNCIL APPROVE THE MINOR SUBDIVISION OF THE 1.0592 ACRE PARCEL AT THE SOUTHEAST INTERSECTION OF ELKTON AND APPLE ROADS AS SHOWN ON THE ATTACHED CDA ENGINEERING, INC., PLAN DATED MAY 20, 2008, WITH THE CITY DEPARTMENTAL CONDITIONS WITH THE FOLLOWING MODIFICATIONS:

- THAT IN TERMS OF ARCHITECTURAL DESIGN, THE STRUCTURE MUST BE CONSISTENT ON ALL BUILDING ELEVATIONS VISIBLE FROM PUBLIC WAYS;
- THAT THE DEVELOPER AND THE CITY CONSULT ON THE FEASIBILITY OF ELIMINATING THE ELECTRIC UTILITY POLE THAT CONFLICTS WITH THE PROPOSED APPLE ROAD ENTRANCE;
- THAT THE HEIGHT AND PLACEMENT OF THE BUILDING ENSURES ADEQUATE CLEARANCES FOR THE UTILITY POLES ALONG ELKTON ROAD;
- THAT THE FENCE EXISTING WOOD FENCE AT THE REAR OF THE PROPERTY BE REPLACED WITH A NEW SOLID FENCE;
- THAT APPROPRIATE AND ADEQUATE SIGNAGE BE INSTALLED TO MAKE IT CLEAR THAT TRAFFIC ON APPLE ROAD IS PROHIBITED FROM MAKING A RIGHT OR LEFT TURN INTO THE "DO NOT ENTER" DRIVEWAY FOR THE BANK;
- THAT THE LIGHTING ON THE PROPERTY BE DESIGNED AND INSTALLED SO AS NOT TO LIGHT THE ADJACENT PROPERTIES ON WINSLOW ROAD;
- THAT THE CITY REVIEW AND APPROVE THE ENTRANCE PLAN REQUIRED BY DELDOT FOR THE ELKTON ROAD ENTRANCE;
- THAT THERE BE NO RIGHT TURN SIGNS IN THE DRIVEWAY FOR TRAFFIC HEADING WESTBOUND ON APPLE ROAD

B. THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR THE DRIVE-THROUGH FACILITY ASSOCIATED WITH A BANK IN A BC DISTRICT.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF THE REZONING FROM AC (ADULT COMMUNITY) TO RD (RESIDENTIAL) OF A .57 ACRE PORTION OF THE PHILLIPS MILL SUBDIVISION LOCATED AT 708 NOTTINGHAM ROAD.

Ms. Feeney Roser summarized her report to the Planning Commission which reads as follows:

“On May 29, 2008, the Planning and Development Department received an application from the Bale Group, Inc., for the rezoning from AC (adult community) to RD (single family, semi-detached) and minor subdivision of a .5757 acre portion of their Phillips Mill property located at 708 and 712 Nottingham Road.

As background, on February 13, 2006, Newark City Council had approved the annexation and zoning to AC (adult community) and OFD (open floodway district) of a 5.6325 acre property located at 708 and 712 Nottingham Road for the 17 unit adult community Phillips Mill property. AC zoning permits residences for persons 55 years of age and older with a series of restrictions and conditions. As part of this approval, several of the historic buildings on the property were to be rehabilitated for adaptive reuse as residential units to preserve the historic integrity of the site.

The current proposal is to rezone a portion of the site containing two of these existing buildings. The applicants indicate that the large, rehabilitated historic structures have a limited appeal for the 55 and older population, and therefore, they would like to make them available for sale to persons under the age of 55. Specifically, the request for rezoning and minor subdivision relates to two structures containing three residential units – 210 Phillips Mill Lane which is a two-story single family unit totaling 2,918 square feet; and the two-unit residence known as the Joshua Mill House at 225 Phillips Mill Lane and 231 Phillips Mill Lane. All three of the units for which rezoning is requested are multi-level, with the two-unit residence (Joshua Mill House) being four stories in height. The Bale Group has been unable to sell these residences to persons 55 years of age and older. They indicate that the inquiries they have had from people in this age bracket would require the installation of elevators and other handicap modifications to accommodate the buyer. Because of the additional expense necessary to make these kinds of modifications, potential buyers apparently have chosen to go elsewhere for 55+ housing.

The Planning and Development Department’s report on the Phillips Mill rezoning and minor subdivision plan project follows:

Project Description and Related Data

1. Location:

708 Nottingham Road; the north side of Nottingham Road, approximately 225 feet from the intersection of Nottingham and Delrem Road to the east and Phillips Mill Lane to the north and west.

2. Size:

The total Phillips Mill property is 5.6325 acres. The portion of the site zoned OFD is 3.0271 acres, and the proposed RD zoning portion is .5757 acres. If approved, the AC zoned portion of the site would be 2.1549 acres.

3. Existing Land Use:

The developed portion of Phillips Mill contains the two historic residential structures for which rezoning is requested, an old grist mill with water wheel, a barn; and several miscellaneous outbuildings. A total of 6 of the proposed 17 units developed have been completed. As noted above, the portion of the site to be rezoned contains the Joshua Mill House, a two-unit multi-story building and a single family two-story residence.

4. Physical Condition of the Site:

The Phillips Mill property slopes steadily from south to north in the direction of the Christina Creek. The demarcation between the upland portion of the site and the much more level floodplain lands is dramatic and obvious. The Christina Creek cuts across the northwestern section of the property, and then turns to the north to form the parcel’s northern most boundary and, after another sharp turn southward a portion of its eastern boundary.

In terms of soils, according to the United States Department of Agriculture’s National Resources Conservation Service and the subdivision plan, the site contains the soils listed below. The Natural Resources Conservation Service’s soils suitability ratings for the development proposed are also shown.

Soil	Location	Rating
Elioak Silt Loam [EaB2]	West/Central	Moderate
Chester Loam [ChB2]	North/Central/East Boundary	Slight
Comus Silt Loam [Cu]	Northeast	Severe - Floodplain

Please note that the area for rezoning does not include the severely rated floodplain soil.

5. Planning and Zoning:

The Phillips Mill property is currently zoned AC (adult community) that permits adult community apartments and other related uses, and OFD (open floodway district). Please note, regarding the Zoning Code’s requirements for an adult community, the Code limits the type of housing, subject to all applicable State and Federal regulations, to occupancy by persons 55 years or older with the following exceptions:

- A. A spouse under 55 years of age married to someone over that age.
- B. Up to two children over 18 years of age residing with at least one parent over 55 years of age whose presence is required to care for that parent.
- C. A spouse under 55 years of age who is the surviving member of the household, if the 55 years of age occupant dies.
- D. An employed member of the apartment staff and his/her family; not to exceed one unit per 100 dwelling units, or portion thereof in the project.
- E. A live-in nurse or similar caretaker whose presence is required for a 55 years of age or older occupant.

The applicants are requesting RD zoning (one family semi-detached residential) for .5757 acres of the AC (adult community) zoned portion of the site containing three residential units. RD zoning allows:

- A. A one-family, semidetached dwelling.
- B. Accessory uses and accessory buildings subject to special requirements.
- C. Cluster development subject to site plan approval as provided in Article XXVII
- D. A one-family detached dwelling.

- E. The taking of nontransient boarders or roomers in a one-family dwelling by an owner-occupant family resident of the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling.
- F. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner-occupant family resident on the premises, is not a use as a matter of right, but is a conditional use subject to special requirements, including the requirement for a rental permit, and provided there are not more than two boarders or roomers in any one-family dwelling.
- G. Church or other place of worship, seminary or convent, parish house, or Sunday school building.
- H. Public and private elementary, junior, and senior high schools.
- I. Municipal park, playground, athletic field, recreational building, and community center operated on a noncommercial basis for recreation purposes.
- J. Municipal utilities; street rights of way.
- K. Swimming pool, private; swimming pool, public.
- L. Temporary building, temporary real estate or construction office.
- M. Utility transmission and distribution lines.
- N. Public transportation bus or transit stops for the loading and unloading of passengers.
- I. Student Homes, with special requirements

RD also permits, with a Council-granted Special Use Permit, the following:

- A. Nursing home, rest home, or home for the aged, subject to special requirements.
- B. If approved by the Council, property in a residential zone adjacent to an area zoned "business" or "industrial" may be used for parking space as an accessory use to a business use, whether said business use be a nonconforming use in the residential zone or a business use in said adjacent area zoned "business" or "industrial."
- C. Police and fire station, library, museum, and art gallery.
- D. Country club, regulation golf course, including customary accessory uses subject to special requirements.
- E. Professional office in residential dwellings for the resident-owner of single-family dwellings, with special requirements, including the requirement that the professional office is permitted only for the resident-owner of a single-family dwelling.
- F. Customary home occupations subject to special requirements.
- G. Substation, electric, and gas facilities, subject to special requirements.
- H. Day care centers, kindergartens, preschools, day nursery schools, and orphanages, subject to special requirements.
- I. Public transportation bus or transit shelters.
- J. Public transportation bus or transit off-street parking facilities.
- K. Swimming club, private (nonprofit) subject to special regulations.

Regarding comprehensive planning, the Newark Comprehensive Development Plan IV calls for single family residential (low density) for the Phillips Mill site. The Plan defines single family residential (low density) as, "areas designated for dwellings occupied by one family, primarily single family detached with overall densities of one to three dwelling units per acre."

Regarding RD zoning requirements, the Phillips Mill rezoning plan meets all applicable RD area requirements except for front setback and rear yard requirements for one unit at 210 Phillips Mill Road. The front setback in RD is 15 ft; the plan provides for 10 ft. The rear yard should be a minimum of 20 ft. and the plan shows 13 ft. Having said that, because the rezoning is requested for a portion of the Phillips Mill project that has already been built according to the approved subdivision plan calling for the adaptive reuse of historic structures that were existing at the time of approval, development approval for the structures has

been granted, and therefore, the 210 Phillips Mill house will be considered an existing non-conforming structure, if the rezoning is approved.

In terms of zoning and land use of nearby properties, the portion requested for rezoning is located within the Phillips Mill site which is zoned AC and OFD. RT zoned property lies to the north of the Phillips Mill site and contains single family homes in the West Branch subdivision. RH (single family, detached) zoned parcels in Christianstead are immediately west of the Phillips Mill property. The land south of Nottingham Road across from the property is zoned RS and contains a single family home. A BLR zoned residential style dentist office is located across Nottingham Road from the central portion of the southern side of the property. To the west of the dentist office across Nottingham Road from the site is a single family dwelling zoned NC21 in New Castle County. The RS zoned lands in the Woodmere single family subdivision are located across Nottingham Road from the southwestern portion of the Phillips Mill property.

Status of the Site Design

Please note that at this stage in the Newark subdivision review process, applicants usually need to show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the Construction Improvement Plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting and related exterior features. If the Construction Improvement Plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the Construction Improvement Plan is referred back to City Council for its further review and reapproval.

In this case, the buildings on the property being proposed for rezoning are already constructed in accordance with the approved Construction Improvement Plan, and all utilities have already been provided. Therefore, architectural conceptual drawings were not required.

Departmental Comments

The City's Management, Planning and Development, and Operating Departments have reviewed the Phillips Mill rezoning and minor subdivision plan and have the comments provided below.

1. The Planning and Development Department notes that the proposed rezoning and minor subdivision does not conflict with the City's comprehensive planning for that location. The Department also notes that all previous relevant conditions will continue to apply to all Phillips Mill properties.
2. The Public Works Department indicates that the original Construction Improvement Plan associated with the Phillips Mill project are acceptable so no new Construction Improvement Plan will be required for the major subdivision.
3. The Parks and Recreation, the Water and Wastewater, Electric and Building Departments note that there are no impacts on their area of expertise regarding the rezoning of the already built properties.
4. The Police Department notes a concern regarding the individuals who have already purchased property in the Phillips Mill development expecting the entire project to be restricted to purchase by persons age 55 and older.

Please note, in this regard, Planning and Development Department records indicate that none of the six Phillips Mill properties for sale have been purchased. Therefore, potential buyers can be informed of the rezoning to RD of a portion of the site

through the buyer information process in the Planning and Development Department, should the rezoning be approved.

Recommendation

The Planning and Development Department believes that the rezoning and minor subdivision plan conforms to land use guidelines of the Newark Comprehensive Development Plan. In addition, the plan corresponds to the development pattern in the immediate neighborhood of the site. The plan, in addition, will continue to preserve the historic buildings on the site. The Department also believes, with the departmental suggestions, that the Phillips Mill rezoning and minor subdivision will not have a negative impact on adjoining and nearby properties.

The Planning and Development Department, therefore, suggests **that the Planning Commission make the following recommendation:**

- A. That City Council approve the rezoning of the .5757 acre portion of the Phillips Mill property from AC (adult community) to RD (one family semi-detached residential) as shown on Planning and Development Department's Exhibit A, dated August 5, 2008 and on the Landmark Engineering, Inc., rezoning and minor subdivision plan dated May 27, 2008; and,**
- B. That City Council approve the minor subdivision plan for a portion of Phillips Mill as detailed on the Landmark Engineering, Inc., plan dated May 27, 2008."**

Ms. Feeney Roser: I know that the applicant is here and that Ms. Goodman is here representing him. I will be happy to answer any questions the Commission might have for me.

Mr. Bowman: Are there any questions for Maureen from the members of the Commission.

Mr. Begleiter: If we approve this, does it set any kind of a precedent for future developments in the City where a developer might come before the Commission and say, I would like to build five pie-in-the-sky units, and then we approve that and a year later they come back and say they have not been able to sell those pie-in-the-sky units. We are going to change them into mud-in-your-eye units and then the City says we did that before so we have to do that again. Is there a precedent setting issue here?

Ms. Feeney Roser: No. Because it is a rezoning, it shouldn't be an issue. We are not required to rezone. Each project is considered on its own merit.

Mr. Begleiter: Are there any promises or exchanges made by the City in exchange for preserving these three really beautiful buildings, that the City said you don't have to really make those two buildings accessible to people 55 and old. Was that issue discussed at all?

Ms. Feeney Roser: I don't believe that was discussed at all.

Mr. Bowman: Are there any other members of the Commission who would like to speak? The applicant is here. If the applicant wishes to speak, please step to the microphone.

Ms. Lisa Goodman: Mr. Chairman, members of the staff, Lisa Goodman of Young, Conaway, Stargatt and Taylor here on behalf of the applicant. If I might, I would just like to distribute some handouts.

I feel a like, after Maureen spoke, that I should just stand up and say I rest my case. She did such a great thorough analysis. And really, I am going to be very brief here.

We are here not really for, obviously, a complete reanalysis of this really wonderful preservation of an historic site. I had a chance to walk through the buildings, and they have been breathtakingly brought back to life. I encourage any of you that get a chance to go see them, they are extraordinary. Some of the original heartwood pine floors have been preserved, specifically on the stair. There are an extraordinary set of what appear to be old stone oven or cooking enclosures in the bottom of one of the buildings. They are extraordinary, and they have been beautifully done by my client, P.J. Bale, who bought this project before anything was done to it after it was approved. So, he has done all of the work.

You folks know where the property is located. It is considerably outside the City. In fact, it had to be annexed into the City as part of the approval. I clocked it. It is a mile and a half, give or take, from the Deer Park straight out Route 273. So, it is pretty far outside of town.

The request here is to change the zoning of two of the buildings. There are a proposed 17 residences on the site. We are talking about three of them. To date, six of the residences have been completed. That is, the three that we are talking about tonight, which are two in the Joshua Mill building and one in the Phillips house. And then three residences in the old Grist Mill have been completed as well. So, except for the work on the barn, the hard restoration work has been done and done first.

The issue here is really very simple. These units are just not suitable as they stand for folks over 55. Now, certainly, someone extraordinary might come along at age 55, 60, 65 or like my mom almost 70 and be perfectly able to run up and down those steps. But, that is most likely not going to continue forever for someone who buys it. That is the concern. Someone who is looking for a unit like that is thinking about the future. That is why they are virtually constructed with a master suite on the first floor and only guest rooms on the second floor. It became clear as Mr. Bale rehabbed these units that they really weren't suitable for older adults. He put them on the market anyway to try to see if, in fact, his gut feeling was wrong. They have been on the market for approximately a year, and he has gotten a lot of feedback from folks who think they are beautiful but just, frankly, are afraid to buy them because they worry they won't be able to get up and down the steps as they age or because the cost of making them somewhat accessible is really a lot.

I am not appearing in front of you tonight to tell you that they cannot be made more accessible than they are today. They can be. And, Mr. Bale has really done his homework and has looked at the possibility of putting elevators into them. It can be done. It can't be done perfectly. For example, the Joshua Mill House, which is the house that currently has the two units. If you look on the site plan, which is on the first page of the handout that I showed you, you will see that it is labeled as 231 and 225. Behind this handout what you will see is the actual spec sheets, the sale sheets for these units. So, they give you the prices that they are being offered for and the actual floor plans, as well as all the details about how many bedrooms, etc. Then there are some photos at the back under tab one of the various buildings as well. Both externally and internally, I wanted you to see what they look like a little bit as well. An elevator could be added but only between the first through the third floors, and it would do a lot of damage to the historicity of it, if you will. You would have to bump out a shell that would be approximately four foot by six foot right in the middle of those historic beautiful rooms to accommodate an elevator. And, one cannot get at all to the fourth floor, and that is because the floors don't line up that way and given where the supports are in the building, you simply can't do it, nor can you get into the building which has steps on both ends by doing that. Even if you added an elevator in those buildings, you would have a much less than perfect both from an historical perspective and because you still would have steps leading up. I suppose you could put ramps on the outside, but again, now we have taken the historical nature of the building and really altered its view as you come up and down Route 273, which I think everyone would find a less than desirable situation.

In the Phillips House, there is an even stranger situation which is, you would have to put in two elevators. You can put in an elevator to get from the garage to the first floor

and then you would have to jump over to the other side of the house and put an elevator from the first floor to the second floor but you still couldn't get third floor and you couldn't get to the basement. When these buildings were built, no one contemplated the idea of elevators. And again, you would have the same issue with getting in initially. You can get into the basement but you couldn't get up the main entrance into the unit. So, there are some limited accommodations that can be done, they do a lot of damage to the historical nature of the buildings. And they are very expensive. These types of residential elevators per elevator, and it depends on how many floors you span, the simplest ones and the smallest ones being in the mid 20's, and if you are talking about multiple floors going up into the mid to upper 30's give or take. Of course, you can go much higher than that, and might want to, if you were going to try to have an elevator that matched the beauty of these houses.

It is a difficult situation. They have been on the market for about a year. Tonight, really, we are just here talking about the roughly half acre that these two buildings sit on. The rest of the project will remain an adult community. I should say that during my years of appearing in front of Newark, I would be remiss if I didn't add – and I have handed you the sheets, but the folks in the audience haven't seen them – these units are priced far beyond any issue with rental units or student housing. They range from \$700,000 to \$400,000, give or take. Even the one lower unit wouldn't begin to pencil out for a rental, not to mention their distance from the University. I also provided you, just so you can see and have it in front of you, and you probably have the large versions, the small version of the plan that we submitted to the City as well.

I am happy to answer any questions. I know you have already had a long agenda and you have another one behind us.

Mr. Bowman: Are there any questions for the applicant?

Ms. Dressel: I don't think I was on the Commission when this was approved. I have a couple of questions about the buildings themselves. Was the Joshua Mill House originally two residences? Is that why it was split that way?

Ms. Goodman: Mr. Bale can correct me if I am wrong, but as I understand it, it was built originally as a residence and then it was later added on to and, what we believe happened, was the addition was added on for farmers who wanted to stay overnight when they would come and have their grain ground. They would stay overnight because even from Wilmington would be a long distance. At some point, there was a joiner of the two and they were used as a residence. Then they were separated again. They have a long history, but they were built at separate times for separate uses.

Ms. Dressel: In the Grist Mill and the additional buildings, is the builder planning to put elevators to make these accessible?

Mr. P.J. Bale: New Castle, Delaware. I have three floors in the Grist Mill. Each floor is one floor living served by a central elevator that goes from the garage all the way up to the third floor unit. So, you walk in the front door and you are in the lobby, you go to your own private door in you unit, or you get in the elevator and go to the second floor with its private door, and so on. The townhouses or mill houses as we call them all have the provision for elevators. So, their design we left space. Every one of them in the first five have something allocated for it in our design. But, three of them have first floor masters. The other two are so small in square footage that we put right into the option package for an elevator. We do have a person who wanted the smallest unit who was interested in 231 that it just doesn't work for him, so he jumped over there.

The barn, which hasn't been renovated, if you can imagine sliced down the middle for two separate home, will look like a barn from the outside. Inside you will drive in the garage, get on an elevator, go up to the first and second floors through the elevator.

The other four town homes when you first drive in you turn to the left, they will also be similar to the first five we are doing. (inaudible) It depends on the buyer or if I get to it first.

Ms. Dressel: In the Grist Mill, you just said they go in the garage and then there is an elevator. When I drove through there, I saw two garage doors. Is there a third because you have three units?

Mr. Bale: That is the Joshua House.

Ms. Dressel: The Joshua House is on the right.

Mr. Bale: That is the one with the big Victorian wrap around porch. That has two garage doors. That is because 231 has a garage area and 225 has a garage area. They are separated by a half wall. It is one open common garage with two doors and split. You can see it on the floor plan. But, the Grist Mill has door with three parking spots under it. So, you open up a little larger than normal door. It is ten foot wide. You drive in and one car goes straight and two go to the right. Then there is private storage for each one and lobby and an elevator tower. From the outside it doesn't appear that way. We worked with Preservation Delaware on the design. Working back and forth, we were trying to keep it from your view, not to catch your attention.

Mr. Bowman: Does anyone else on the Commission have any questions for the applicant? If not, I will open it to the public. I have one written request – Jean White.

Mrs. White: 103 Radcliffe Drive. The Village of Phillips Mill, this set of buildings was on the National Register long ago before the City annexed it. For many years it was actually an island in the County surrounded by City land – Christianstead, Woodmere. Actually, the land beyond it, this was really not at the far reaches of town but, actually, sitting almost on the western middle part of it. So, it finally got annexed. At that time the developer was Randy Beck and the original plan that he presented was what is the Joshua Mill House was one unit and there would be four in the Grist Mill. One of the people at that meeting was Richard Dayton, who was once on the Planning Commission, and actually who is an architect. He had relatives who lived in one of the . . .

Mr. Bowman: Mrs. White, pardon the interruption, but I am going to ask you to address the issues tonight.

Mrs. White: First I wanted to comment and commend the developer on, actually, the beautiful job he has done. I live very close to this so I walked up to it when an open house was held a little while back and went into every single room of the different rooms that the developer has described, along with many other people who did the same thing. And, it is really a beautiful job. When I heard that there was going to be a rezoning, I was under the impression that it was going to be the whole thing. It is just those two buildings, three units that is asked for. I fully support that. I think that is an excellent idea. Even those of us who walked through at the time felt, in spite of the beautiful job that was done, not only were the different floor problematic for people who were just moving in at an older age, but also, that they were very large living spaces. So, it seemed that one or two people would rattle around in them. So, I think this is a great idea. I had hoped that there would only be 16 units, but Council approved 17 units.

Another reason I am happy is that I am not entirely in support of creating divisions of different ages in developments. There are some reasons to do that and in some cases it's a good idea, but I actually think by allowing a potentially younger family to move in here, it will provide a little bit of diversity for the other 14 units that are there. I think that will actually be very good.

I have two questions. By creating this parcel that has three units that will be RD zoned, will they still be part of the overall maintenance organization that will be doing the grounds of the whole thing?

Mr. Bale: Yes.

Mrs. White: In light of the exquisite detail and refurbishment and the price, this is extremely unlikely to happen, but nevertheless, in some of our less expensive area there has been a deed restriction that no more than two unrelated people live in them. Not three. Now, I think that the chances of this being a problem is very small, but nevertheless, would it be good now that this will not be AC zoned to put that deed restriction in?

David Bones: I live at 1 Hidden Valley Drive in Christianstead. I would like to take this opportunity to recognize the great work you have done on these properties. I had not originally intended to speak tonight, but I share the concern of Commissioner Begleiter. Anyone that knows the property knows that those two buildings were never suitable for occupancy for 55 and up. So, the question becomes, when the original plan was submitted, why was that not considered? If we do pass this proposal, I think it does create a precedent that other developers may make note of this situation and take advantage of it. I stand in support of this rezoning, but I urge the Commission to be very careful in understanding what a Pandora's Box they may open. I thank you for the time to speak and stand in support of the variance.

Mr. Jesse Priester: I live at 629 Lehigh Road, apartment D11. I just wanted to remark that housing in Newark is very, very expensive for most people. Just the thought of something being on the market for a year and no one living there is a little upsetting to me. I fully support this. I think that anything that takes pricing pressure off of the main part of Newark is a good thing.

Ms. Helen Skinner: We live across the street from the development and we are delighted with what Mr. Bale has done with this. My only concern is not related to this but is related to the 55 and over population. I have been an advocate for the disabled for 35 years, and I am concerned that when we are talking about 55 and over developments, do we think in terms of universal design for some of the units? I am not concerned about this one. But, as we continue to build the 55 and over units, I feel the Commission should be thinking in terms of universal design for a certain percentage of those. I am not talking about the exotic, I am talking about wider doorways, bathrooms, etc., that people may need later after they have bought the unit. They may not need them at the time. They may be perfectly capable of moving around, but I think that the Commission should be thinking in terms of universal design for future units.

Mr. Bowman: We will bring this item back to the table for further discussion and a recommendation.

Mr. Osborne: I am trying to find the page, Maureen, where it is mentioned about nonconforming.

Ms. Feeney Roser: That would be on the bottom of page #4 and the top of page #5.

Mr. Osborne: Can you clarify what that is and just what the impact of that is?

Ms. Feeney Roser: A nonconforming structure not meeting area requirements?

Mr. Osborne: I understand the setback and that is what it is addressing, right?

Ms. Feeney Roser: Right.

Mr. Osborne: It is not addressing anything other than those?

Ms. Feeney Roser: Right. So, if it is resold and they do the survey, they are going to find out that it doesn't meet the area requirements for the zoning district. They will come back to the Planning and Development Department, we will verify that it is an approved nonconforming structure for that zoning district and it goes through.

Ms. Sheedy: There has been some concern expressed about setting a precedent, and I certainly support the proposed change even though being over 55, I would move in a

minute if I had \$800,000, but I think setting a precedent is something that we need to consider and I am wondering if there is some language that we should consider in our approval that stresses the unique nature of this property, because it is unique. It is a wonderful property, the preservation is marvelous, and I think someone who is willing to take that kind of risk to develop this property should not be stuck with a property that they can't sell. But, I am interested to know if we included something in the approval that recognizes the unique aspects of this property, would that have any teeth later on.

Ms. Feeney Roser: As I mentioned to Ralph earlier, it is a rezoning and each rezoning stands on its own merits. We are not required to rezone anything, however, I would agree with you that this is such an outstanding example of historic preservation, that I don't see why you couldn't put that in your recommendation, so that it is very clear to Council why it is that you think that a rezoning is appropriate in this case.

Ms. Dressel: I just want to say that I drove through the neighborhood and it looks like a beautiful construction project and work on the preservation of these buildings, so thank you very much for doing that. I am in support of this rezoning because I have a lot of concern about having too many 55 and older communities. I think it is kind of a nice idea to have some mixed ages within a community. I guess I have one concern, and it actually goes back to the builder, say you get a family interested in 210 and they have young children, are they going to be able to put up a swing set. Is that deed restricted from the neighborhood? It seems like there is going to be a very limited age group that is going to be potentially interested.

Mr. Bales: I have been asked similar questions – barbeque areas for 210. First of all, we tell everybody that walks in that we are trying to work with this whole rezoning. That way nobody is in the dark. They are not thinking of moving in to strictly 55 and older. It depends on when you buy. If you are the first person in, I write the restrictions. I will change them because the second person and myself are going to consider it. So, it really depends on what they are looking for. I have six children. I wouldn't consider it. There is not enough room there. We just sent out 8,700 postcards. We are targeting 50 and above. We are targeting price range comparable houses. We will welcome 40, we will welcome 30, we are not going to turn anyone away. From the families that have come in a looked around with the young children, there is not enough for the kids to do. I don't know that that is really going to be an issue, but we will address it if it, does occur.

Mr. Begleiter: I would like to commend Mr. Bales for a truly beautiful restoration effort and project there, and also for your foresight in including accessibility options in the majority of the buildings that you are building as distinct from those which you were forced to deal with because they were built many years ago. So, I think you have amply demonstrated your desire to make these properties accessible to those 55 and older.

A comment, I don't think one year is too long to wait for the sale of a house in the current market. I understand that I don't have my money at risk there, you do. But, there are a lot of people sitting on houses for a lot longer than one year at this point. So, that is not weighing too heavily on my mind, at least as a Commissioner here. Having said that, I don't think it is right for the Commission to hold Mr. Bale responsible for the challenges of being faithful to a 200 year old design and to try to shoehorn two or three elevators into a building to try to make it meet the AC zoning conditions. So, I don't think we can hold him responsible for that.

As far as the nonconforming setback issue, I don't think the Commission should be concerned with that. The houses were not nonconforming when they were built 200 years ago. They were probably quite a bit farther back from Nottingham Road, and it was Nottingham Road that encroached on those properties not the properties encroaching on Nottingham Road. That would not be the case for the other buildings on the site, but for these buildings they didn't move in the 200 years, the road did. So, it is regrettable that the road moved, but the nonconforming nature should not be held against the developer in this case.

MOTION BY BEGLEITER, SECONDED BY DRESSEL, THE PLANNING COMMISSION RECOMMENDS:

- A. THAT CITY COUNCIL APPROVE THE REZONING OF THE .5757 ACRE PORTION OF THE PHILLIPS MILL PROPERTY FROM AC (ADULT COMMUNITY) TO RD (ONE FAMILY SEMI-DETACHED RESIDENTIAL) AS SHOWN ON PLANNING AND DEVELOPMENT DEPARTMENT'S EXHIBIT A, DATED AUGUST 5, 2008 AND ON THE LANDMARK ENGINEERING, INC., REZONING AND MINOR SUBDIVISION PLAN DATED MAY 27, 2008 WITH THE CONDITION THAT THE RECOMMENDATION DOES NOT SET A PRECEDENT FOR ANY FUTURE REZONINGS AT THE PHILLIPS MILL SITE NOR ANY OTHER AC ZONED PROPERTIES IN THE CITY OF NEWARK; AND,
- B. THAT CITY COUNCIL APPROVE THE MINOR SUBDIVISION PLAN FOR A PORTION OF PHILLIPS MILL AS DETAILED ON THE LANDMARK ENGINEERING, INC., PLAN DATED MAY 27, 2008.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

4. REVIEW AND CONSIDERATION OF THE REZONING, MAJOR SUBDIVISION AND SPECIAL USE PERMIT FOR APARTMENTS IN DOWNTOWN FOR THE DEVELOPMENT OF A 12,125 SQUARE FOOT COMMERCIAL BUILDING WITH TWENTY SECOND AND THIRD FLOOR APARTMENTS ON THE 1.75 ACRE PROPERTY AT 257 E. MAIN STREET AND THE THOMAS BAKERY SHOP (BING'S BAKERY).

Ms. Feeney Roser summarized her report to the Planning Commission which reads as follows:

"On May 28, 2008 the Planning and Development Department received applications for rezoning, major subdivision, and a special use permit for the development of the 1.75 acre properties located on the south side of Main Street between Shamrock Printing and existing office building owned by Fair Hill, L.P. The property fronts on both Main Street and Delaware Avenue, and therefore, is also adjacent to residentially zoned properties on Tyre Avenue and Municipal Parking Lot #5. The applicants and owners of the properties, 257 East Main Associates, are requesting a rezoning from the existing BC (general business) to BB (central business district) for the portion of the site fronting on Main Street (.86 acres), and major subdivision in order to construct a 12,125 square foot commercial building with twenty second and third floor apartments and an associated parking area. The plan also calls for the preservation of the Bing's Bakery building. In addition, the developer is requesting the required special use permit for apartments in the BB district.

Please see the attached Landmark Engineering rezoning, major subdivision and special use permit plan and the attached supporting letters from the applicant and Landmark Engineering.

The Planning and Development Department's report on 257 E. Main Street follows:

Property Description and Related Data

1. Location:

South side of Main Street between Shamrock Printing and Tyre Avenue residential properties on the east; Fair Hill Properties and Municipal Parking Lot #5 to the west; and Delaware Avenue on the south.

2. Size:

Totaling 1.75 acres; Proposed BB – 0.86 acres; BC – 0.89 acres

3. Existing Land Use:

The northwest portion of the site is developed and contains a two-story commercial building fronting Main Street with a one story addition, which houses Bing's Bakery and associated parking for the bakery. The remainder, and bulk of the site, is grass covered with several large trees throughout.

4. Physical Condition of the Site:

The bulk of this site is undeveloped. The northwestern portion of the property contains Bing's Bakery and its associated parking area. The undeveloped area is a relatively flat grassy property with 12 large trees scattered across it and several more along the property lines. There is also a landscape screen between the Bing's Bakery's parking area and the remainder of the site. Several utility poles are also located on the site.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, and the applicant's plan, the site contains Elsinboro – Delanco – Urban Land Complex [EuB] and Aldino – Keyport – Mattapex Urban Land Complex [Am]. According to the Natural Resources Conservation Service, the soil has slight to moderate development limitations for the proposed uses.

5. Planning and Zoning:

The existing zoning of the 257 E. Main Street and Thomas Bakery project is BC. BC is the City's general commercial zoning district and permits a variety of commercial and related uses. The applicants are requesting the rezoning of .86 acres of BC (general business) zoning fronting on Main Street to BB (central business district).

The requested BB zoning permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.

- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning area requirements, the 257 E. Main Street and Thomas Bakery Subdivision Plan meets all applicable Zoning Code specifications.

Regarding adjoining properties, the parcel immediately north of the site across Main Street is zoned BC and contains the Newark Shopping Center. Along the eastern property line for a portion of the property fronting on Main Street is the BC zoned Shamrock Printing building; south of the Shamrock parcel to the east, the property is adjacent to residential homes located along Tyre Avenue. The southern border of the property is Delaware Avenue with a small piece of MOR zoned property along the first curve of the S-turn on Delaware Avenue, which is owned by DelChapel Associates. To the west of the property along Main Street is the Fair Hill, L.P. office building and associated parking area and outbuildings that are zoned BLR. The southern portion of the eastern property boundary borders the Municipal Parking Lot #5, which is a monthly permitted parking lot, zoned BLR.

Regarding comprehensive planning, the Newark Comprehensive Development Plan calls for “commercial (auto-oriented),” uses in the Planning Section within which the 257 E. Main Street property is located. The Plan defines commercial (auto-oriented) as, “shopping and commercial uses of all types including retail facilities for buying and selling of goods and services, administrative and professional offices, personal services establishments, eating establishments, and shopping centers ordinarily included in general business districts with customers, to a large extent, relying on the automobile to patronize these businesses.”

Also regarding comprehensive planning, the portion of the 257 E. Main Street property fronting on Main Street (essentially the portion for which the rezoning to BB is requested) is located within the boundaries of “Downtown Newark part of Downtown District 3.” The Plan notes that, “mixed use redevelopment integrating convenience retail, services, offices and residential uses (both student and non-student housing) for this district. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; and the contribution of the overall project, including proposed apartments, to the quality of the downtown economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods.” The rear portion of the site is located within the boundaries of “Downtown Newark, part of Downtown District 5. The Plan indicates that, “housing rehabilitation and redevelopment should be concentrated in this district,” and, “efforts to encourage family owner-occupant type projects should be emphasized.”

Please note, in this regard, that the 257 E. Main Street plan calls for 11.42 units per acre.

In terms of the project’s design, the applicants met with the Downtown Newark Partnership Design Committee on July 1, 2008, to discuss the project and have received a positive recommendation with respect to the building and site design attributes of the 257 E. Main Street project.

Subdivision Advisory Committee

The City Management, Planning and Operating Departments have reviewed the 257 E. Main Street rezoning, major subdivision and special use permit plan and have the comments below. Where appropriate, the subdivision plan should be revised prior to review by City Council.

1. The Planning and Development Department notes the following:

- The City staff, Planning Commission and City Council have raised increasing concerns about additional student rental type housing downtown. In this regard, the currently under review Comprehensive Development Plan IV has specific language calling for the careful evaluation of uses of this type.
- The Newark Comprehensive Development Plan IV designates the front portion of this property as being located within “Downtown Development District 3” and stipulates that, “any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including the proposed apartments, to the quality of the downtown economic environment; and other potential significant negative impacts on nearby established businesses and residential properties.”
- The rear portion of the property is located within the “Downtown Development District 5” which is designated for “family-owner occupant projects.” The Comprehensive Plan is suggesting here that we encourage some type of owner-occupant residential use, with tenant restrictions, at this location.

The Planning and Development Department, therefore, believes that the front portion of the site lends itself to a variety of commercial uses permitted in either the current zoning or the requested BB zone, with some limited residential use. The balance of this site, especially the portion of it adjoining the rear yards of homes on Tyre Avenue, could be appropriate for a well designed adult community cottage-type development, or some other form of strictly owner occupant housing designed so it is compatible with the uses on Tyre Avenue. The number of these units should be relatively small.

2. The Planning and Development Department suggests that if the proposed apartment units are eventually approved, the properties should be deed restricted to allow only four unrelated individuals to reside per unit.
3. The Planning and Development Department notes that the building design received a positive recommendation from the Downtown Newark Partnership Design Committee and suggests that the Planning Commission recommend as subdivision site design conditions the following:
- Based on recent Council concerns regarding building design at the construction phase, all materials to be used on the structure must be specified before City Council review, and included in the subdivision agreement.
 - The architectural design of the proposed structure be consistent on all building elevations visible from public ways.
 - Storage areas, mechanical and other utility hardware shall be screened from view of all public ways and nearby properties in a manner consistent with the proposed architectural design.

4. The Planning and Development Department notes that the project as submitted might make a more direct contribution to the community if some of the rear (Delaware Avenue) portion of the site was incorporated into Municipal Parking Lot #5. This consideration might also provide a second access to the site from Farmer's Lane.
5. The Building Department indicates the following:
 - Because of the height of the building, two (2) means of emergency fire access are necessary. The current plan shows only one access on and off of Main Street.
 - The traffic island shown on the plan bisects the fire lane allowing only 12 feet to the west, and may need to be relocated.
6. The Electric Department notes the following:
 - Electric service is available from Main Street.
 - The developer must pay all costs to relocate the utility pole in the parking lot by the stormwater management system, and to make the changes necessary to accommodate service to the development on the Main Street utility pole.
 - A suitable location for a padmount transformer approved by the Electric Department must be shown on the plan.
 - The developer shall pay \$9,000 towards the cost of radio read meters and transformers.
 - The two large Maple trees along Main Street must be removed at the developer's expense to allow the aerial 34,500 volt wires to be installed on cross wires.
7. The Parks and Recreation Department notes that:
 - The Norway Spruce trees which are located on the southwest part of the site should be saved, if possible. The present plan does not allow a wide enough buffer for the existing Norway Spruces located on City property at Lot #5 to survive. The Department suggests the southern most 13 parking spaces on the west side of the property be reconfigured to five or six parallel spaces to accommodate the necessary buffer. In addition, the root system of these trees extends into the project property and, therefore, during construction the developer should set up a safety fence at or near the drip line of these trees to prevent construction equipment from passing over the root systems and materials from being stored or placed on the root systems.
 - For the trees to be planted along the sidewalk area the developer should construct tree pits and install tree grates to match the Main Street streetscape grates to be installed this summer.
 - Because the eastern part of the property borders residential homes, and because landscape buffers, although attractive, take several years to grow to form a solid buffer, the Parks Department suggests the installation of a solid fence along the eastern boundary to provide an immediate and permanent screen.
8. The Public Works Department indicates that:
 - The swales running along the east and west property lines will require the removal of many trees in order to install. The Department believes that several of the Cypress trees along the western boundary could be saved if the

parking area and swale are shifted further to the east. This option should be evaluated in the construction improvement plan process.

- Additional elevations will be required on the driveway of the Shamrock property, and the backs of the two properties on Tyre Avenue to verify the drainage will not be blocked by the proposed building.
- The Department has additional construction related comments which will have to be addressed during the construction improvement approval plan.

9. The Water and Wastewater Department indicates:

- The developer will be responsible for STP fees and the cost of meters to service the new development. The fees are due at the time that the CO is issued.
- All existing services not being used shall be terminated at the main pipe.
- All water and wastewater sewer tie-ins in Main Street shall be done as night work from the hours of 10:00 p.m. to 6:00 a.m., Sunday through Thursday. Repavement of Main Street will be to DelDOT's specifications.

10. The Police Department indicates:

- There is concern with the only one entrance/exit being on Main Street as it will add more traffic to an already congested street.
- There is also a concern about the number of rental units at this location. While the density calculates to only approximately 11.42 units per acre, the addition of 20 more rental properties raises concerns regarding order of maintenance issues, the impact on Tyre Avenue residents, and the impact on public resources.

Recommendation

Because of previous questions raised by the City staff, the Planning Commission and Council regarding the proliferation of rental units downtown, because of the emphasis of this concern in the currently under review update of the City's Comprehensive Development Plan IV, because of the unusual and positive opportunities presented by the location and condition of the site, and because the proposal conflicts with the land use guidelines in the updated Comprehensive Development Plan IV, the Planning and Development Department suggests **that Planning Commission consider the following:**

The Department suggests two alternatives for the Planning Commission to consider:

1. **Recommend that City Council not approve the 257 E. Main Street rezoning as shown on Planning & Development Department Exhibit A, dated August 5, 2008, nor the major subdivision and special use permit plan, as shown on the Landmark Engineering, Inc., plan dated March 26, 2008;**

-or-

2. **Table consideration of the 257 E. Main Street rezoning as shown on the Planning and Development Department Exhibit A, dated August 5, 2008 and the major subdivision and special use permit plan, as shown on the Landmark Engineering, Inc., Plan dated March 26, 2008, with direction to the applicant to revise the plan to include the Subdivision Advisory Committee's recommendations, including reducing the number of proposed rental apartments in the BB zoned portion of the site, and considering owner occupied units or other use compatible with the houses on Tyre Avenue in the rear [to accommodate this would require an additional rezoning]."**

[Secretary's note: The Planning Commission and the public referred to visuals brought by the applicants for their presentation to the Commission].

Ms. Feeney Roser: I know that the applicant is here, and he will be happy to answer any questions, as will I.

Mr. Bowman: Are there any initial questions for Maureen from any members of the Commission?

Mr. Begleiter: Maureen, what is the status of the Delaware Circle right-of-way? What is the legal standing of that piece of property, which is vacant?

Ms. Feeney Roser: Reserved for future right-of-way. It is still there. I believe that the applicant didn't feel that they wanted to use it.

Mr. Begleiter: It is still there, so the City could decide tomorrow, if they wanted to, to pave the road and make it a dead end right up to this property. Right?

Ms. Feeney Roser: Yes.

Mr. Begleiter: There is nothing in what was approved about that right-of-way that restricted (inaudible)?

Ms. Feeney Roser: Not that I know of.

Mr. Begleiter: You mentioned in your report the City's interest in the parking adjacency of Lot #5, and you use the word consideration. Was there some discussion between the Planning and Development Department or other departments and the developer, in this case, about trading access from Lot #5 in exchange for a more favorable recommendation of this proposal?

Ms. Feeney Roser: There was discussion that there would be more than adequate parking for the facility proposed and that it would be beneficial to addressing the City's parking challenge if some of the surplus parking was dedicated to the City.

Mr. Begleiter: To have some of those spaces that are on this property be dedicated permanently or annexed, in affect, to the City?

Ms. Feeney Roser: We did make that comment. The developer didn't indicate that they were interested in doing that at the time, and the plan came in without it.

Mr. Begleiter: I have a final procedural question. You recommend either rejecting the proposal or tabling it. Procedurally, what is the difference? If the Commission rejects it, then the developer is entirely free to do whatever they want to do and come in with a new proposal or not, as the case may be. If we table it, with specific recommendations, do they still have that same freedom or are they some way bound by our guidance, if you will?

Ms. Feeney Roser: If you vote it down, they can then take that plan to City Council.

Mr. Begleiter: They can take the existing plan to City Council.

Ms. Feeney Roser: They can take the existing plan to City Council. If you table it, they have to come back to you with a plan that is revised to meet your concerns, or not – but they will have to come back to Planning Commission again.

Mr. Begleiter: I understand. Thank you.

Mr. Bowman: The applicant is here. Step to the microphone and please state your name and address.

Mr. Jeff Lang: 13 Springwater Way, Newark. This evening I have Joe Charma of Landmark Engineering, Dan Hoffman of DCI, Chris Locke of our organization, and Carla Guzzi, owner of Bing's Bakery who is a co-applicant which isn't discussed entirely in the write-up, but we will discuss that additionally this evening. Also, here tonight is Chuck White of White Realty. He is working with us on the project. He is representing the sellers and part of my presentation is really to give you a history of how we got where we are. Obviously, it would be great to have Maureen's recommendation this evening. Unfortunately, we have tried to work directly with the Planning and Development Department and work through a lot of these issues before we got to this point. So, part of this conversation tonight will be why we are presenting this evening without a positive recommendation from the Planning and Development Department. We have a lot of things that we have tried to implement that we think still make it a very viable and positive project for the community.

I want to give you a little history about the project. I got together with Mr. White and spoke about this parcel about one and a half to two years ago with the possible availability of the parcel from the sellers. We spoke real quickly with Roy Lopata who was Planning Director at the time about some possibilities for the site and evaluated what I thought was a reasonable price point. The sellers decided that they didn't think that was reasonable, decided to take it to the market at a different price point and eventually over a year's time lapsed. They had a contingent contract that didn't work out and came back to us and said that they were interest in trying to pursue something along the lines of what we thought we were going to do a year or so ago. At the time, we were thinking about a building that was very similar to Pomeroy Station, which if you look at our ultimate design, it is somewhat similar to Pomeroy Station. It is a little bit shorter, and actually a little bit smaller, but very similar to what Chuck and I spoke about a year or so ago.

In the interim between the time when it was originally offered to us and, subsequently, now obviously there has been some potential concerns from staff and Council about density downtown, how many units do we need downtown and do we need to continue to see proliferation of apartment units? From a developer and resident town, I think apartments are a very positive contribution to the downtown area. I have not seen the negative things happening to the community that maybe some other people seem to think are happening. We will continue to talk about that.

Additionally, as we started talking about the site, we looked at some of the things that Maureen touched on – the adjacency to Tyre Avenue, the access off of Tyre Avenue, the Tyre Avenue impact, the adjacency to Lot #5, the potential uses on the BC lot and Chuck had been approached by a hotel developer. We tried to put a hotel on the site. The hotel would have sat actually in the back of the site. It could have been a six or seven story hotel. It actually met the criteria of BC. We couldn't figure out how to get the parking on the site. The development opportunity did not seem to move forward because the hotel operator didn't think it was going to make a lot of sense after he started laying the site out. The site is zoned BC and, as you know, as a BC use you can put hotels, you can put office buildings in BC so we started thinking about our options? We designed a site with a little bit smaller building out front and a two or three story office building out back with parking underneath. We talked about that. We talked about the need to come in off of Tyre Avenue, obviously, to access the office building because you are not going to build a building in the front and back of the site with only one access point. We looked at that, did a design, thought about those options and then we talked again to the Planning and Development Department and talked about the BB up front. In the interim, we started talking to Carla and her husband about what Bing's Bakery was trying to do long-term and what their plan is. Obviously, all businesses are dealing with the economy today. One of Carla's concerns is how does she stay competitive and how does she stay in Newark. We met with Maureen and Roy, talked about building design and should we build two buildings there and incorporate her building into a new structure or move her use into the building next door. We actually designed two buildings in the front of the site, incorporating her site, knocking her building down. Then we talked about the concern about that from the landmark perspective of Bing's, and why Bing's is very important to the community, that we would be keeping the business but we would be losing the building and that was very important, we thought. After talking more and more with Carla and her saying that she was happy with

the building, but if we are going to do BB, it would be great to do BB for her building too, so that she could have a couple of units above her business, and make our business much more economically viable going forward and share a driveway, which we have incorporated and a shared parking area in the back. It additionally adds a tremendous benefit to Bing's going forward. It allows Bing's to continue to, hopefully, stay on Main Street for many, many years to come and continue to be a great business here.

So part of our development plan allows for a shared entranceway and we are bringing all the utilities up through the shared entranceway for both buildings saving Carla a tremendous amount of money for her modifications to her building if she ever wanted to do them and allowing her some shared parking in the back. As we started talking about the building size, when we got to this point we started thinking about where the logical breakpoint in the back of the site for the BB component and the other component. The building actually could extend much deeper given the amount of parking that is available on the site and still meeting all the criteria from a parking perspective. We do have more parking spaces as Maureen mentioned. Partially, those are due to the fact that we would like to allow Bing's to use them as a good neighbor. We have worked out an agreement and understanding on how that would work. We have also talked about working with the City on a potential use agreement or dedication agreement. We haven't worked it out, but we have talked about it. Part of the problem with talking about it is that the Parks and Recreation Department has also talked about how they would like to maintain some trees on the site. How do you maintain trees on the site and eliminate spaces and also provide an agreement in writing with the City on how you are going to do that without really knowing how many spaces; ultimately, Carla would like to need and/or need depending on how her business goes. You also would like to have a little bit of extra parking because, as we have talked about with this site, we have talked about creating a destination building that works hand-in-hand with some of the things that Carla is trying to do in her business with her wedding business-cakes. We have talked about working with the owner of Formal Affairs and potentially relocating his business in that area, maybe another caterer, maybe another wedding service-type business to try to create some symmetry and some logic between what we are doing with our tenant mix.

We started looking at our building. It is 230 feet deep. From anybody driving down Main Street, you are really going to pay attention to how deep this building is. Actually thinking about Pomeroy Station, Pomeroy Station is 300 feet long and 60 feet wide. This building is 60 feet wide and 230 feet long. When you drive down past Newark Shopping Center, you do notice it, but you don't really see it. This building, you are actually going to pass much quicker. You are not going to have a big side view.

Part of the Comprehensive Plan concern that Maureen also pointed out was that this site is really split from a comprehensive planning perspective to the front of the site being BB and the back of the site being what would be nice to be AC or residential even though it is zoned BC. One of the things that she did recommend as part of the tabling process was shorten the building up and creating some units in the back. Joe labored at length trying to figure out how to make that work. As one point of discussion we had about six or seven weeks ago with the Planning and Development Department. We did, actually, design a site that had some of those components, but there are a tremendous amount of restrictions like you dealt with the RD and conforming side, front and back yards. To do a small little project back there we would have had to access off of Tyre. It didn't seem to make a lot of sense. You have eight or ten units back there. The price points when you start figuring all the other things into it, just didn't seem to match what we thought would sell at that point. We were going to be in the \$400,000 range per unit after we build it and I can't see selling \$400,000 units at this location with all the other commercial uses next to it. We have a City parking lot, we have Delaware Avenue, we have the new Transit Hub. It just didn't seem to make sense to me from a marketing perspective. One of the things that I want to emphasize is that when we do take into account a tremendous amount of these things before we get to this point.

We want to try to make a project that is economically viable for many, many years to come. We know that residential rental units will work today. They might turn into condominiums five years from now, 20 years from now. That is how New York City and many urban environments started. It was businesses and residential rental above, which

eventually turns into residential ownership depending on the demand and the use components of your downtown area. We really think that this structure really does meet the long-term needs and the short-term needs for the community, and we think it is a very, very positive contribution to the community.

Something I wanted to talk about real quick was the design of the building. I was down at George Washington where my son is doing an internship this summer, and came across a building, which was right across from the building he was staying in. I think the design works very, very nicely for this site. Dan rendered the front to bring in some components which mimic some of the other buildings on Main Street. We looked at the side. There are some pictures. I don't know if you got any of them in your packet. The building is a four-story building. Obviously, we are proposing a three-story building, but it gives you some ideas of the design features, not necessarily the scale of the building but really a lot of the design features. We started thinking about how this would be such a nice new addition to the downtown area.

As we continue to see the evolution of Elkton Road with new developments down Elkton Road extending Main Street around the corner, there has always been this hesitancy to move up Main Street. We have done one of the projects – Pomeroy Station – we did another one down the street. I think there needs to be a continual evolution of that end of the street. We are not asking for the entire site. We are, actually, building a smaller building than, in theory, you could build there given the parking. We want to be concerned and good neighbors. We think this is going to be a very, very good addition to the community and the street.

Mr. Bowman: We will come back to the table. Are there any questions for the developer from the members of the Commission?

Ms. Dressel: I have a question about some of the pictures were given because I am just not sure that I understand. The driveway façade, I have two different sets. You are showing them as well.

Mr. Lang: It is, actually, the same picture. This one is just bigger.

Ms. Dressel: So, these are indented. Is that it or are they a different material?

Mr. Lang: What we thought about doing is that we wanted to create some potential seating areas or areas to break up the scale of the building. At Pomeroy Station, if you think about that building, it is 300 feet long, but it has a couple of little jogs in it because of the way the design works. Instead of having a 230 foot long building, we created some pedestrian seating and outside areas if there happened to be someone who wanted to get a cup of coffee at a coffee shop and go over to Bing's or even get a cup of coffee at Bing's and eat a pastry outside. That is kind of what we are trying to do with that. And that is what that shaded area is on the drawing.

Mr. Begleiter: Jeff, could I ask you to stand at the microphone, and could I ask Joe to stand at the chart for a second, please. Joe could you put your finger on the southern most property line of the Shamrock Printing building. If you drew that line straight through your property that far, and you made the building that long – and I am considering, Jeff, that you said you went through a lot of these options, and I'm assuming you have the answers to these – how many apartment units would you have in a three-story building with two stories worth of apartments?

Mr. Lang: I think you would lose somewhere between four and six units.

Mr. Begleiter: So, you might have twelve units remaining.

Mr. Lang: You would have 14 to 16 units in the front portion depending on how you laid them out.

Mr. Begleiter: So, you could get 14 units in the same bulk of the Shamrock Printing building's depth. Okay. How many parking spaces would you gain in the parking lot behind that building if you did that in the space that Joe was just pointing to?

Mr. Lang: You would gain six spaces.

Ms. Dressel: You would gain more than that.

Mr. Charma: (inaudible)

Mr. Lang: You would gain 12 spaces.

Mr. Begleiter: If you have that configuration, how much of the parking lot would you have to keep in order to meet the minimum parking requirement for the building that we just hypothetically described?

Mr. Lang: Probably everything from those trees forward.

Mr. Begleiter: Which trees?

Mr. Lang: Those trees.

Mr. Begleiter: I was guessing that it was further north than that, but you are saying roughly from the Delaware Circle right-of-way.

Mr. Lang: You would have an extra 55 parking spaces.

Mr. Begleiter: What I am getting at is, if you did that, hypothetically, and you put townhouses in the southern end of the lot with Tyre Avenue/Delaware Circle access and no access around the southern end of those units, how many townhouses could you get in there?

Mr. Lang: You might get four.

Mr. Begleiter: Would they have to be \$400,000 townhouses?

Mr. Lang: Depends on how you build them and who you are building them for. If you are building to sell them, who is going to buy them? If you can rent them to somebody, then you can sell them. If you can't rent them, then you have to meet the price point that a townhouse would meet at that point for a single family buyer. So, they have got to be at \$259,000-\$269,000. The land component associated with that parcel will be about \$75,000 a unit, so you would have to build a unit for \$150,000 or \$160,000. Say, you build a 1,500-1,600 square foot unit, \$100 a square foot, it is a close breakpoint. But, it is a possibility. Ralph, we did go through a couple of these gyrations, and we actually had a 8,000 square foot building up front with twelve units. When we had one with 12 and one with 14 units, we tried to figure out how many units we could put in the back. Could we put four, could we put 8. We actually have a design with 14 and they meander through the whole site. We have been through a number of these gyrations. To Maureen's credit, she and Roy did look at some of these and they said it is a little bit too dense. At some point, you have to move forward with something.

We have not purchased this property. We have a contingent sales agreement that has a certain time schedule in it, so the sellers are hoping that we are going to do something. If not, we are going to move on and they will sell it to somebody else. They might sell it to somebody to put a strip center in here. You could put an office building in here. We are keeping a lot of our development to the front. We are not tying into Tyre Avenue. Some people want us to tie in to Tyre Avenue from an access perspective. I don't know whether it is good or bad from an access perspective because it does bring traffic off of Tyre Avenue and the residential community into our lot. It is actually good from a planning perspective but it is bad from traffic perspective for those people. I am seeing what you are getting at. We can show you a design that we came up with.

Ms. Dressel: I was looking at the total required number of parking spaces and the total provided, so there are 21 excess spaces. And, I understand that some of those are to be used for the bakery, however, 21 seems like an awful lot. I was looking at it and thinking, is there a way to at least put more green back onto this lot because it is a beautiful grassed lot right now, parkland almost, with gorgeous tall trees, then this plan is calling for almost the entire thing to be covered. I think one of the things that would be nice to see is to provide some parkland – a little bit more than is presently on the plan. I don't know if it would be the part that was closest to Delaware Avenue. I would like to see more grass and open area at the very least.

Mr. Lang: Angela, part of our struggle when we do a design is, obviously, we look at a site and we say, okay, how is the parking going to fit in here, how is the building going to fit in, and we do a number of gyrations. We met at the site with Tom from the Parks and Recreation Department and looked at some trees. I am more than happy to save trees especially if we can save mature trees because it takes a tremendous amount of years to grow trees. We said we would be more than willing to work with the Parks and Recreation Department on saving these trees. We would be more than willing to continue discussions with the City about incorporating some of these spaces in their lot. A lot of it really wasn't a final understanding because, obviously, you're at this point in the process. Some of that is getting your recommendations, your thoughts, incorporating those into the plan. One of the thoughts I talked about with Joe is that we can eliminate 20 spaces and we don't have to do our subsurface stormwater back there. We can put a little stormwater management pond and plant some trees and it would look really nice off of Delaware Avenue or off of Tyre. Parking is a huge, huge premium. Maureen will tell you that. Look at Lot #5 next door. At one point it was a green area and now it is a parking lot. This is a commercially zoned property which tends to be developed to the extent of what is allowed in the Zoning Code. Joe looks at the Zoning Code and he says we can put parking in here. This meets the Code. I am more than happy to save some trees. If we need to eliminate some spaces, we do have extra spaces.

Mr. Joe Charma: Landmark Engineering. Just briefly, Angela, your comment about the trees. Do you have in your packet a landscape plan? Did you review that plan?

Ms. Dressel: I did look at it and you do have quite a few trees.

Mr. Charma: There is a significant number of canopy trees and shade trees. There are 20 shade trees and then 44 evergreens. I think at the end of the day, the mature site is going to be (inaudible). We have to keep in mind that the site is a commercially zoned site. We have done the best that we can, and we have been working with the Parks Department. As Jeff mentioned, there are spaces that are adjacent to Lot #5. You can see it on plan. They are the darker trees that are shown. Those are the Norway Spruce. There are a couple of other, what I would call, specimen trees because they are 24" in diameter. Again, it is sacrificing parking spaces, so if Planning and Development is saying they like parking and Parks is saying we like grass, we would like to make everybody happy. So, we are going to try to do that. At the end of the day we are going to find some balance there. Maybe we do eliminate several of the spaces around the nicer trees to give them more breathing room.

Mr. Begleiter: Maureen, that is sort of why I asked the question earlier about the Lot #5 thing. Either the City can say it wants to have a nice cute little residential neighborhood there or it can say it wants parking spaces there. This lot is surrounded by parking and a really ugly S-turn in Delaware Avenue.

Ms. Feeney Roser: It is going to look a lot better because we are painting a mural on the S-turn barrier wall starting Monday.

Mr. Begleiter: That is why I asked that. What is the City's priority? If you just want parking spaces, you can pave the whole thing over and you've got parking spaces, but that is not, obviously, what the developer here was attempting to do.

Can I ask a question about the Bing's Bakery building – the salmon section on your colored drawing? The lowest portion that looks like a square is the frame building, correct. Isn't that a frame building?

(inaudible)

Mr. Begleiter: What is the one-story masonry building listed on the drawing in that location?

(inaudible)

Mr. Lang: Bing's is almost three stories in the front and then drops down to one-story in the back.

Ms. Kass Sheedy: I drive past this property all the time, and the other day I went, in anticipation of this, I went and spent some time on it. Right now it is lovely. I think we all have a desire to keep some of that loveliness. I don't know how the residents on Tyre Avenue feel about this development. We haven't heard from them yet. But, could we keep some more permeable surface – some more green and more trees – by eliminating some parking spaces along the east boundary of the parking area and using a green buffer between the proposed parking lot and the back of the residential properties on Tyre Avenue. Is that feasible and would that actually keep some of the greenery? Are there any trees in that area except for the line of trees on the boundary?

Mr. Lang: There are not as many large specimen trees on that area, for whatever reason. You could probably take the additional spaces and either make islands larger over there, create a buffer by eliminating a number of spaces along there and still meet your parking requirement. Ultimately, the Parks and Recreation Department wants us to eliminate spaces on the other side. We could eliminate some spaces on that side, too, to make it more beneficial and attractive for the residents there. The one thing about those residents is that most of their houses are up on Tyre. That is the end deep portion of their back yards. The Parks and Recreation Department said put up a nice fence. Well, if you put up a big fence, it doesn't matter how much green is on the other side of the fence. So, do you put the fence up 12 feet onto our property so they pick up 12 feet of additional green? That is one of the things you can think about. If you put a fence up and you put screening there, then how much green is on the other side doesn't matter. Joe did point out that the landscape plan did show all these trees. I think when you do save large trees, it is great. We saved some down at the Mill at White Clay Creek and out at Twin Lakes. We actually went out to Twin Lakes and argued with the Parks Department and the Public Works Department about our pond. They said the pond wouldn't work because you have all these big huge trees. I said I wasn't going to cut down 15 trees to make this pond work. Let's shift the pond, move it over here, and we spent a ton of time and effort to save these trees because it is important to do. I think some of the best trees in this site are towards the front of the site which is the best commercial component of the site. It is hard to do that. As Joe pointed out, we will more than adequately plant the site. If you've gone back to some of our projects like Pomeroy Station, some of our (inaudible) trees are starting to get taller. Within another 3, 4, or 5 years they will be large trees which people will start thinking about, hey, we need to save that tree when somebody else wants to do something in there like DelDOT putting their greenway through there and kill a bunch of stuff. It is something to think about, but we are more than happy to try to accommodate the Tyre Avenue residents with more additional buffer. The buffer might have to be designed. Maybe we could back off on some of those parking spaces and put a swale there with some dirt, which we have done at other locations. If you create a swale and plant some trees on top, it kind of creates a different look for the resident when he is looking out the back. There really isn't a building there. It is just a parking lot. So, if you put a 4 ft. or a 5 ft. swale and you put some trees on it, and you do it correctly, it doesn't look like a swale you see on an interstate and they just slap up and it is 50 ft. tall. But, you can do them and you can roll them and they look very, very nice. That might be the way to compromise some of that greenness, which everyone wants. We want it, too. I live in town and I think it is important to have green as much as possible.

Ms. Peggy Brown: First of all, I think there are too many units and too many people; and I am sure some neighbors are going to say that, too, because I live on W. Main Street. We don't need any more night time traffic. I have seen this done other places. I disagree with the Electric Department saying chop those trees down. I think underground is the way to go, and you can probably do that under the driveway. We keep planting trees. Why chop

them down? Why don't we move the whole building back instead of cutting it off at the back, but having a small park in the front with access from the front where people from the street could enjoy it and people would still be able to come up if you had a small sign or something? I have seen this done in other towns. Not here in Newark, but I have seen it done in other towns and it is really quite pleasant.

Mr. Lang: Joe can talk about it. We, actually, did push our building back further than is required because we were more cognizant of it at this point. We have, actually, pushed it back 15 ft. We haven't pushed it back 50 ft.

Ms. Brown: I am talking a small park. The Academy building at the corner of Academy and Main Street. People use that. I see people sitting there having ice cream and such.

Mr. Charma: You are right. That is like our town square, if you will. Your concern and your observation is well taken. I have to say at this point, I am the Chairman of the Downtown Newark Partnership Design Committee, so I look at these issues with my committee. My committee looks at these things quite carefully. With the Planning and Development Department's guidance and citizen guidance, we have developed a set of guidelines for downtown Newark. Those guidelines say that the building should be pulled up to the sidewalk to complete the streetscape. I don't know if you have looked at the Design Guidelines. That is the basic premise of the Design Guidelines. Those are the guidelines that have been around since about 1997 or 1998. They have been updated recently. I agree that there are instances that you want to take advantages of setting a building back. We have a couple of other buildings that are setback, and we wrestled with that. It has to be a real compelling reason to set a building back because it will be out of place with the other buildings. There have been buildings that have been demolished and renovated. The buildings have been pulled up to the street to complete the streetscape. Those are the guidelines. Don't shoot me. I'm just the messenger. With this particular building, we would really like to create a patio area in front. There may be opportunity, again, depending on what happens with the size of the building, at the end of the day, maybe this building can come back a little bit. I know the Building Department wants us to be away from the wires anyway. That is an Electrical Code issue. That is why it is setback the way it is.

We plan on replacing those two trees. With all due respect to our Electric Department, they kind of chopped the heck out of them around the wires. They all kind of lean to one side, which is not really good for a tree. We can look at that. We may be able pull it back a little bit. We created a nice porch feel – a covered patio, if you will. We want to bring people out into the street. Most of the restaurateurs really want to try to get outdoor seating. They want to have a nice street façade and a nice presence. Something that is very pleasant and landscaped well. I think that can evolve a little bit.

You mentioned the number of units also. I guess this is my queue to talk about the Comprehensive Plan. Maureen mentioned that this is District Three. District Three does encourage redevelopment-type projects with apartment mixed use-type projects – commercial retail, specialty retail, with student and nonstudent apartments.

Ms. Feeney Roser: I think I said that.

Mr. Charma: I have a section right out of the draft Comprehensive Plan right in front of me that I was going to read into the record, but I am sure you are all familiar with it. The Comprehensive Plan talks about mixed use redevelopment. This project does accomplish that, certainly, because we are looking at specialty retail and we are looking at apartments. So, we are bringing residential and retail components together.

In terms of density, the Comprehensive Plan also mentions the DelChapel Brownfield site as its example of density. That site is now known as University Courtyards. That site has a density of 12.24 dwelling units per acre. 209 E. Main Street, which is on the verge of being completed, right across the street from St. John's church that has a density of 11.54 units per acre. This project, as Maureen pointed out in the report, has a density of 11.42. So, we are slightly lower than the recommended density of the DelChapel site.

Lastly, compatibility with the existing downtown. This project received unanimous approval from the Downtown Newark Partnership Design Committee. The Acting Chair, since I had to recuse myself, is here tonight, if you would like to talk to him about how the committee reviewed that and the comments they may have had. I believe that report should be in your packet. The completed building will be a significant contribution to the downtown area by improving the quality of life by adding a mixed use of residential and retail components. So, I think the density is appropriate. It certainly is slightly below the recommended Comprehensive Plan density.

Mr. Bowman: Is there anyone else from the Commission that would like to comment?

Mr. Begleiter: Joe could you go to the diagram for a second and point to the lot adjacent to the property under discussion which contains the insurance business?

Okay, that is the one. And, which one is the one with the big red garage that is pushed all the way back against your property line? So, it is that one, okay. So, in terms of views of the subject property, there would be no views from the one you have your finger on now. That is identified as the Tolomeo lot on the diagram. So views are not an issue from that piece of property as it is currently configured and, the insurance company property also, at least in my opinion. So, it is not an issue there. It might be an issue on the lot in-between and . . .

(inaudible)

Mr. Begleiter: Right, it is a parking lot. It is a business, basically. It is not a residence. Are the other two lots on the southern most end, those are both residences to my recollection.

Mr. Charma: Yes.

Mr. Begleiter: And the lot in-between the red garage and the insurance company? That is a residence also?

Mr. Charma: Yes.

Mr. Bowman: We will open for public comment. I have three written requests. The first one is Frank Tolomeo. Please come to the microphone and identify yourself and your address, please.

Mr. Tolomeo: 24 Tyre Avenue, one of the properties that borders the property that you want to use. I want to dispel something about parking places. I don't know who is counting in here. You have 42 parking places for the new businesses. There are nine doors, so the first one, I assume, is a restaurant, and eight more doors going into stores in the new building. You have five employees. That is Bing's Bakery all by itself. Now, what about five people for the restaurant, two people per store for the other eight. That is 21 more parking places you didn't add in. So, now you have no extra parking places. You got ten. That is half the size of this room. So, where are you getting these extra parking places? They don't exist if you are going to conform to what you have as rules. Correct? Why did you only add five employees? Nobody is going to work in the new building? No response, okay.

Mr. Bowman: We will give them a chance to respond. Go ahead with your questions.

Mr. Tolomeo: That was number 1. (2). Runoff is a big problem with all the Tyre Avenue properties. Every one of them along there has water in the basement. That is because they are made out of field stone. You can't waterproof them without great expense. So, it is very important to us not to have anything running off onto our property. We can handle the water that is in our yards and it does get into all the properties along there. Everyone on both sides of me for houses and houses gets water every time it rains, but it runs out because the sewer is at a high level there. Right now there is absorption of water in there, which is great.

Thirdly, a lot of things seem to be missing in this building. You have 20 apartments. I am also HVAC certified so you have to have outside condenser units and compressors somewhere. If they are wall units, you know they are going to be in the back facing the houses. I have never seen the back of this building. For all I know, it could have balconies back there where all the kids are going to be out there whooping and hollering right at our back yard. Where is a picture of the back of the building? I haven't seen it. Like I said, the refrigeration units, what are you going to do with the refrigeration units for the store? They are going to be multi-BTU, tons and tons of refrigeration for walk-in boxes in the restaurant to keep things cold – freezers. Stores need air conditioners. Every one of them is going to be separate. Where are these outside evaporator units going? They are going to take up parking places.

Fourth, the fire restriction. You can't have this square foot of building with one method of going in and out with fire equipment. So, this plan is out. It can't meet Fire Codes. I can get the Fire Marshal up here tomorrow and talk about that.

Ms. Feeney Roser: I think our Fire Marshal has addressed that, Sir. It is in the report. They have already said that.

Mr. Tolomeo: The State Fire Marshal in Dover.

Ms. Feeney Roser: The City of Newark Fire Marshal already put it into his report on the project.

Mr. Tolomeo: He should agree.

Ms. Feeney Roser: Thank you.

Mr. Tolomeo: The other thing is, this front of the store wants to be on Main Street because all these restaurants like to have people out there drinking. And, I will tell you, the East End Civic Association is one powerful group. And, Jerry, Councilman Clifton, can tell you that, too, that we have stopped people from getting alcohol permits right across from that residence. That Java coffee place wanted to sell alcohol out there. We shut them down. They didn't get their permit and they tried twice and didn't get it. So, from the railroad tracks east is a different kind of town than Main Street Newark with its businesses and restaurants. We don't usually get involved – our east end – in what goes on there because it is all commercial. Restaurants have people out there drinking on the sidewalk and drinking in their brewery. That doesn't bother us. The noise and stuff doesn't bother us on that side of the tracks, but when it comes up to where we are, such as that restaurant. One time they had a band out there. They got shut down. They had loudspeakers out and the same things goes for the other restaurants that are along there. They don't come out in the street and make a lot of noise because we complain about it. So, that is one of the reasons why they want seating out in front of this place so they can sit their restaurant tables out there.

I am not going to talk too much about the impact on the residents because I know the other residents are going to talk about that. But, this is way too much big of a building. With that many students in there, you are going to have noise problems – absolutely. The Police know that. Let me tell you the reason where the house went on Main Street that used to be there. They had college students in there. Wally had rented it. When he moved south, he had a rental agent. They rented it to college kids. I was there when it happened. On one weekend, they threw beer kegs and busted every window out on that house and broke every wall out in that house. When he came back to assess it and look at it, it couldn't even be repaired. He had it torn down. So, that is what happened with a bunch of students at that location.

Right now Tyre Avenue and George Read Village has a buffer zone around it. There is nothing close. The apartments are on the other side of Delaware Avenue. The next apartments are on the other side of the bus stop – high-rises. We are going to be looking at the back end of this building, so I want some questions answered. The refrigeration units, I want to know what I am going to see on the back and what they propose to do about the passageway. They forgot the employees on the parking spaces.

Mr. Bowman: I am going to take all the public comments and then you can respond. The second one I have is Mr. Charles Barba.

Mr. Charles Barba: I own a property at 32 Tyre Avenue. We operate a business at that location. I favor development. I don't have anything against development, and I think it is good for Newark and I think it is good for the City in general. I do, however, have some concerns about this particular development. As I listened to some of the comments by Jeff and some of the other developers here, with regards to the trees, there is one tree that is on this property – and I don't know if you have ever walked this property or not – but it is right behind the Tolomeo and the Kisen property. It is a White Oak tree that has a girth of 16 ft., and it has a height of least 100 ft. It is a specimen or champion tree. To tear that tree down, which is right on the property line, and it is right in the plan of this proposed three-story building, would be a tragedy. That tree has to be 125 years old. It would be a tragedy to decimate that particular tree. When Jeff was talking about these other trees down here – these little spruce trees that grow quickly – that one doesn't.

The other issue I have is water run-off because what you are doing here in this beautiful park-like setting is you are asphaltting it and where is all this water going to go? We already have a very high water table as Mr. Tolomeo has said. It may very well affect the properties directly behind and on Tyre Avenue.

The other issue that we have here, as I see it, is just access to the properties or this development where you really have one way in and one way out, which is Main Street. The City does own this little access way here on Delaware Avenue. That would make a better access for going in and out so that you not only have access on Main Street but you would have access on Tyre Avenue.

The final issue that I would have is that if you go ahead – and at some point this is going to get approved because it will be developed in some form or fashion – it will directly impact the value of the properties on Tyre Avenue as residential properties. And, how is the Planning Commission going to compensate the residents or the property owners on Tyre Avenue for the loss of the value as a residential property? That would be an issue that should be directed. Now, development is happening. I don't discourage development, but times are changing and the needs are changing.

One final issue that I heard brought up that the apartments that are going to be put here are “residential” in nature. I would have to refute that. They are not residential in nature. They are student transient apartments. I don't think anybody who would be a resident would rent apartments in this type of conformity. They are not a residence in nature when you have four unrelated people allowed to live in apartments where you have 20 on each floor, you have 40 apartment units, you have 160 people each with an automobile. I mean, they are generally student related. I understand the economic impact of that, the need for that because it is return of investment, and this parcel of ground is an expensive parcel of ground. I understand that, but the nature of the development is not for residential apartments or for Section 8 apartments or for families to move in to these apartments. It is specifically at an economic return. I don't beguile that, but we do have to look at that.

Mrs. White: 103 Radcliffe Drive: One question to start up with for the developer. Mr. Lang, I was wondering if you are putting real brick or whether you are putting brick facing like you are doing on Elkton Road at the old Grainery site.

(inaudible)

Mrs. White: I wanted to say something about the Design Committee's approval of the design. I was at the meeting when this was done, although, I am not a member, I was an observer. The Design Committee is only looking at what fronts on Main Street. They are not looking at the whole side of the building. They are looking at what fronts on Main Street. That is what their charge is to do.

(inaudible)

Mrs. White: You did present the whole thing but the qualifications of it are looking at the front, which is what you were determined about. You weren't determined about the length and that kind of thing.

What do I think about this? This is a very large property – 1.75 acres – and it is very beautiful. I don't think you can say that by putting this in you are going to improve the quality of life in Newark. I go to Bing's Bakery quite often, and in fact, I was there today. I never have problems with a parking space. I parked on the street and got something for dessert. My daughter is visiting. Unfortunately, I had to leave to this meeting before my husband and daughter were having dessert so, hopefully, they saved me something. So, when I get home I can have some dessert from Bing's Bakery. The one good thing I want to say is that I appreciate the applicant and developer taking into consideration quite nicely the Bing's Bakery and keeping it in its place and the shared kinds of things that have been talked about. That is the positive thing, I would like to say.

This is a beautiful property, and I have walked back and looked back. It is a green glade. It is all lawn. It has beautiful trees. It is really beautiful. It is one of these sites in Newark, one of the few remaining. When Lot # 5 was built, it had really nice Walnut trees. They were all cut down and now we have little islands with tiny little trees. That was not nearly as nice as this. All around town, we are losing things that have character and were distinguished and were beautiful. So, I realized long ago because the "for sale" sign has been on for a long time that something was going to be built, particularly in the front of it. I even realized that the two trees that are halfway cut on one side and curled around the wires, that they would come down, even though they do give shade. I sort of envisioned, if I thought about it, that there would be a building built in the front. But, the fact that the whole thing that you would have a building – I measured and the building is 8 1/4" long according to your blueprint and your scale is 1" for 30 feet, so I get a building that is 247 feet long. That is too long. That is way too long. Almost all the rest of it is macadam with parking. This is a travesty to do to a beautiful place. A building in the front, I can see. Some other types of uses part way back, I can see, but nothing can be preserved for either park for those who live there or garden for those who live there.

There are, of course, 20 units. If there were four per unit, that would be 80 people. Since there was discussion back and forth that was something that came out a little bit different. That is a lot of people, even so. 87 spaces are required and you have 118. That is not 21 but 31 spaces over what is needed. I can see having a couple more for those who come to Bing's Bakery who don't get a parking place on the street like I always do, but that is way more than should be had. I decry seeing so much macadam. Yes, you have some trees there. All these little ones around the edge and a few little islands with a little lollipop tree, they don't compare to what you see, or even if part of it, could remain.

Another thing has to do with the roof line. This is a very uninteresting roofline. It reminds me of the Newark Lumber building. Those of us who remember Newark Lumber can think about that. Or even the one you are building now at 102 E. Main Street. You have a long roof line and put some of these little triangular jabs here and there to try to pep it up. But, really, it would be nice to do something with the roof line to make it in and of itself for those who might see it from Tyre Avenue to make it more aesthetically acceptable. Too many apartments, and straight roof line, hardly any greenery left, what more can I say. Somebody has already talked about the specimen trees that have a huge girth. There is a Maple tree and two Oak trees and many other trees as well.

It is a mystery to my, I cannot understand, why the developers are putting the 55 and old adult community zoned AC zoned places outside of town, whether it is Paper Mill Falls, Village of Twin Lakes, Briar Creek and the place that would really make sense to do this would be right in our downtown area on Main Street where those who might stay in it could actually walk to the stores, and so on. I can't understand why the very obvious place to put some 55 and older is somehow assured by developers. So, we have the odd situation that we are ringing the town with, on the outside, where people can only get to places by driving. And, yet, in the downtown where people could live, because there is not restrictions, almost all of those apartments have been taken by college students. Therefore, there is a competitive situation that it difficult. Would any older couple want to live where the rest of the building is college students. So, what I am wondering, I don't live on Tyre so, I think

the people on Tyre are the first ones to speak to this. But, I would think you would put a building somewhat like you have there for the front, but shorter, even shorter than the Shamrock building next door. Then, if you could put some 55 and old AC zoned in the back – cottages, for example. I think there are people that would buy them. Also, allow some of the area for park for those who might live there. I am aware of a number of retirement communities, for example, that actually have community gardens where people can have plots. For example, just to give one that was in the paper recently, there was an article in Cokesbury, and they had a whole spread on their gardens that people had plots. That, I think, would be the best use for this. It would carve out a notch for those to be able to in an adult community, and live near Main Street, and yet it would allow for a front building to be the kind of thing you are talking about, but not with 20 apartments going so far back – maybe a quarter or a third of that size.

Priscilla Ionize: I live at 104 Tyre Avenue. I did speak with some of my neighbors. Unfortunately, due to conflicts they could not be here, but our main concern is that we want our privacy preserved at all times. We don't want to hear these kids and we don't want to see them. We don't want another Attica.

Nadine Bangerter: 23 Tyre Avenue. We are new to Newark and we purposely picked Tyre Avenue to live because we think it is such a wonderful neighborhood. We are involved in the East End Association, and we think it is a very viable wonderful neighborhood. But, we are bombarded on all sides by Section 8 housing that is not maintained. We have student housing. We have people that are only supposed to have three people in a home. We have six cars, sometimes, of the students living there. So, the laws are not being maintained. So, we have homes that have way too many students living in the homes. They have parties. We have issues. So, we are bombarded as a residential neighborhood. I think I really appreciate the City voicing their concern. If it is important to the City to have a viable residential part of their City as part of the neighborhood and the dynamics of the City, George Reed Village and Tyre Avenue are, I think, a very important part of that. I am very sad to think that these developers are not really thinking about our neighborhood. They are thinking about 20 new residential units. Let's think about them, let's maintain, let's celebrate them. I don't think you ever came and talked to me to see what our needs might be. I feel like we are an important part of the City, and I would like us to be looked at.

Mr. Jesse Preister: 629 Lehigh Road, Apt. D11. Basically, my main point is that housing is very expensive and we need more units and we need to put them somewhere. We have lots and lots of bars. We have lots and lots of liquor on Main Street. Alternatives to that would be a great thing. I'm hoping that you are not counting on having any more bars or any kind of alcohol serving establishments in this building. As far as who lives in the building, to me an adult community right next to a transit hub is an ideal thing. I think mass transit is a thing of the future. With gas prices going up a lot of people are switched to that. I think the mass transit situation in Delaware is slowly improving, and I think the trans hub is a great step. I think having people right next to it who can get on the bus instead of driving around is a good thing.

Mr. Chuck White: White Realty, I represent the estate of Dale Reese. They are the fee simple owner of the property. Jeff Lang is under agreement to buy the property on condition of this development. The owners of the property are three out-of-state trustees. We fielded several offers of one of which was a 100 unit six-story hotel. They checked the reputation of Jeff Lang in the area because they are from out of the area. That is why they went forward with the agreement. If Jeff is unsuccessful, I will probably be before you again sometime with a permitted use like a six-story 100 unit hotel and other permitted uses, the way the property is zoned commercial at this time.

Mr. Bowman: Mr. Tolomeo, if you would confine your comments to the table or I will have you ejected from the room, please. Thank you.

Ms. Carla Guzzi: I am the owner of Bing's Bakery. I heard a lot of talk this evening about the college students, but I didn't hear about the homeless people who sleep on my roof in the winter and the drug addicts that come into the bakery in the wee hours of the morning. So, there are challenges on that property right now. We see it because we are there at 3:00 a.m. So, I just wanted the residents to consider that as well.

Mr. Bowman: The applicants have an opportunity to respond to some of the questions that were raised. And, if we can, keep it brief.

Mr. Lang: We will try to individually try to address pieces of it, but we are of the understanding – and we have talked to the Planning and Development Department – that because the BB portion of the property buttes a residential portion, no alcohol uses are permitted on this property. We cannot put a restaurant in here that would serve alcohol. So, that patio out front that was alluded to that there was going to be a rowdy hangout, that isn't going to happen. There might be a coffee shop or a small sandwich shop or something like that. It doesn't mean a restaurant can't be there, but a restaurant that serves alcohol can't be there.

There wouldn't be any balconies. We have discussed that from a use perspective balconies are not suggested and/or appreciated by the Police Department. We do own a number of units and we don't put balconies on them because we try to maintain the management of the resident within the confines of the apartment unit.

The access points that were alluded to, obviously, doors are proposed on a plan so that Joe can give a grading plan to the Public Works Department to make sure it is handicapped accessible depending where we ever put a door. There are nine or ten doors proposed on a build, but we would never put nine or ten doors in. We might put four tenants in a building, we might put two tenants in a building or three tenants. So, we are not sure about how many tenants in a building. From an access point for the upper floors, the Fire Marshal is concerned about multiple egress points. In any three-story building you need at least two stair towers for egress; so, there are going to be two access points at a minimum. A fully sprinklered building, as you know, you have different egress issues. You might, depending on the width or length of the hallway, need another access point. We haven't even gotten to that point yet because we, basically, look at the square footage of the building, determine that units should be somewhere around 1,000 square feet. If they get too big, they become difficult to manage from a management perspective, as you see a lot of houses around here. Houses are easy to take advantage of the process because you rent a house and you have three or four kids living there and the next thing eight kids live there, as was alluded to. One of the things we do with our apartments is we have been involved in apartment management for so long that we figured out that it is very important to design buildings that are manageable, not only by us but for the community because we don't want to have problems in the building. We don't want to be called out at two in the morning. And we don't want any of the residents to be negatively effected. So, we try to make sure the unit sizes work correctly. We minimize the common space in the building. So, when Ralph was even pointing out, if you cut that off, how many units are you cutting off. Well, approximately, you are cutting off four to six depending on how many square feet you are talking about.

We have thought about all of those things. One of the other points that was really some of the impetus behind the City asking or requesting additional residential units downtown was that there were too many houses that were under permit and residential rental use. One of the benefits of all the density that has existed or been built over the recent years downtown is that many of the houses that are less desirable have become not rental units and have been purchased and/or renovated and sold as single family units. That should be, I think, the continuing desire of the community to continue to eliminate residential house rentals and turn them into single family homes and put residents in apartments instead of having them in houses.

Mr. Charma: I took a lot of notes. I tried to take pretty copious notes so I can address people's concerns as best I can.

Mr. Tolomeo talked about the parking count being incorrect. The parking count is based on the sections of the Zoning Code. It is clearly defined on how to rate the parking based on square footage and use. Those numbers are reviewed by the Planning and Development Department, and when they concur with what we submit in accordance with the Code that becomes the basis of the plan.

The second comment was about runoff and water in his basement. That is unfortunate that there is water in their basement, but actually, the properties on Tyre Avenue drain through this property. The drainage generally runs from east to west across the property down toward lot #5 where there is a large swale that goes into a catch basin and then out onto Delaware Avenue. So, we won't be contributing to any runoff. Additionally, our stormwater system is a recharge system which is mandated by the State of Delaware, so we will be putting water back into the ground eliminating surface runoff, if the conditions are favorable. I have to qualify that because we have not done any geotechnical work in the vicinity of our stormwater recharge area.

Condenser units and compressor units, they are going to be on the roof. They won't be visible from the street. We have done other projects – 102 E. Main Street that has a 6,500 square foot restaurant in it. As a matter of fact, all the compressor units are on the roof. All the HVAC units are on the roof. Center Square is another mixed use project. There are no visible condenser units or HVAC units anywhere. So, we have a lot of experience with this type of building.

Fire access. I take that to task with the Building Department. Mr. Tolomeo, Main Street is a primary fire lane which services the front of that building and, what I will call Baker's Lane, that runs in along the west side of the building is a primary fire lane also. It is 24 feet wide and it is ten feet off the face of the building. It meets the Code for a three-story building in accordance with State Fire Regulations. The building is also accessible in the rear. So, that building is 75% accessible and it is fully sprinklered. So, I don't see any issues with the State Fire Code or the Building Department.

As far as access points, I think what the Building Department is referring to is that they may have only seen one door – what they think is a door – on the plan or on that site plan where we are showing access points. At this point, that level of design isn't known, but we are very aware of the Code and life safety. That is one of our primary concerns. It is certainly one of mine as a civil engineer.

The patio, the alcohol, as Mr. Lang mentioned, we are aware of the regulations that it is restricted. We are aware of that.

Moving on to Mr. Barba. The tree, if we talked about potentially shortening the building, if that becomes a reality, then that large tree will certainly have the opportunity to remain. Runoff issues, again, the runoff drains from east to west across that site. Access to Delaware Circle. I was a little vague on his question. I wasn't sure whether Mr. Barba wanted it or not. Do you want the access?

Mr. Barba: I would think that it would be a great access for the total development of that property, and it would be positive for the development and for my property.

Mr. Charma: Compensation for lost value of residential property. I was a little bit confused by that, and I am not being facetious. I believe that Mr. Barba operates a business in a residential zone. I guess he will be part of that compensation. Student apartments, I keep hearing that they are not residential in nature. Of course, those uses can turn to condos tomorrow or anything else. Again, I have to go back to the City's Comprehensive Plan. That is the plan that guides the City, and it's telling us what the community wants to see. Clearly in there – I recall reading that – in District 3 student and non-student housing, apartments specifically, were the desired mix in a mixed use project. So, I just want to reiterate that the use is something that the Comprehensive Plan is guiding us toward.

Ms. Feeney Roser: Do you want me to respond to that, Joe?

Mr. Charma: Yes.

Ms. Feeney Roser: That is true. In the Comprehensive Plan, District 3 calls for mixed use, and essentially, District 3 is the building, that is where you are putting your BB line. The back of the property is a different Comprehensive Plan district, which calls for owner-occupied housing, for the most part.

Mr. Charma: I am going to let Mr. Locke continue. I have done what I can do. The rest of the comments are pretty general. We can go back to them if anyone would like.

Mr. Chris Locke: 604 Cambridge Drive, Fairfield, Newark, Delaware. I am also employed by Lang Development and own Formal Affairs at 129 E. Main Street, Newark.

I am going to respond to a couple of things about Maureen's report and about a couple comments that have been made here tonight. I have tremendous respect for Maureen, and she and I are usually in agreement on every single thing. I have had the pleasure of working with her for many, many years on the Downtown Newark Partnership Merchant Committee. I hope that the "Interim" in her title will be removed, and she will be the Planning Director if all goes well. But, I have to tell you, I am scratching my head about this anti-apartment philosophy that seems to be coming across through certain City departments, I have not heard from anybody on City Council, though, it is referenced in the report. For the record, I think when we talk about apartments, it is a real mistake to say student rentals. Under the Fair Housing Act, you are not allowed to do that. If someone comes into our office and wants to lease an apartment, we have to lease it to them whether they are a student or not. Yes, are students going to be the most likely to rent these apartments? Absolutely, but we also have to understand that these apartment rentals are available to anybody in the public. And, I think we need to be weary of the Fair Housing Act when we look at these things.

A couple of months ago I was here speaking on behalf of Gus, who had five or six apartments for the dinner. I said it then, I'll say it now, and I will probably say it in the future – apartments are good for Main Street. Main Street is thriving. It is a commercial enterprise area. It is not single family homes. It is not parks. It is a commercial area. Businesses are here. Why is this Main Street thriving when so many other Main Street are not thriving where they are losing business to malls and strip shopping centers? It is mainly because of this mixed use concept that we have been able to use here in Newark for so many years, since mid 1996/1997. I had a gentleman Dover in their Main Street Partnership who said that they would love to have what you guys have in Newark. Someone from Elkton said that they would love to have what you guys have here. In 2003, I was graciously awarded the Small Business Person's Award. And, I thanked two people when I got my award – my wife and, second, Jeff Lang. This was before I worked for Jeff because it was his vision back in 1995/1996 that has transformed Main Street into what it is today. I have been in Newark since 1975. I came down here from New York, went to Newark High School, went to the University of Delaware's Business School, went to law school in D.C. and came back. I remember what Main Street was like in the 1970s and 1980s. I know we have some lifelong residents on this Board and I know we also have some that have moved here in the last 10/15 years. In the 1970s and 1980s, the big excitement was cruising down Main Street. You looped around, you went to McDonalds and you cruised around and that was about it. Then in the 1990s, we said you could only cruise three times. What did the high school kids do? They parked their cars on Main Street and we had a whole bunch of high school kids hanging out on Main Street, having a beer, getting into fights. Jeff came along and started doing this mixed use concept and now it is not the case.

Mr. Bowman: I'm going to encourage you to keep to the subject.

Mr. Locke: I am getting to my point.

Mr. Bowman: Reminiscing is great, but not at 10:55 at night.

Mr. Locke: If we look at the businesses on Main Street, we really have an unbelievable stability and growth on Main Street because of this mixed use concept. Look at all the retailers who have been on Main Street for 15, 20, 30, 40 years. It is unheard of. And, look at all the new businesses that have come into Main Street in the last ten years – Starbucks, Panera Bread, Caffé Gelato, and California Tortilla. It has been a blend of existing Mom and Pop shops and national tenants coming in. That is unheard of. Go to Christiana Mall and see how many businesses are still there that opened up in 1978, 1979 when that mall opened up. There are very few, but there are many businesses here that opened up in the 1960s and 1970s that are still here.

Because, also, of the mixed use concept, the real estate value has tremendously increased over the last 14, 15 years here on Main Street. When I bought my building in 1994, I paid \$135,000 for it. 14 years later, that building is worth somewhere around \$800,000. That is a 500% increase in the value of the property. And, unfortunately, that makes Main Street very hard to do residential projects of the nature that Maureen would like to see on this property. The Planning and Development Department said maybe we can do AC zoning. I live and breathe AC. I am in charge of the Village of Twin Lakes. I am in charge of the Wilson Farm project for Lang Development. This site is not for AC. The AC buyer wants a clubhouse, wants an in ground pool, wants an exercise facility, wants the trees, wants the birds, wants nature, wants the walking trails. They don't want Main Street. They just don't. For the price point that we would have to sell these – Jeff said \$400,000. It is actually high \$400,000s low \$500,000s. It is just not going to work. We just had a developer in here tonight who has got a beautiful property. Phillips Mill is gorgeous and he can't sell them. Why do we think we are going to be able to sell AC units on S. Delaware Avenue where the curve is, it just isn't going to happen. It is just not a feasible possibility for this property.

Jeff talked about it briefly, this project does help the residential communities because it puts less pressure on residential rentals. The lady said that she loves Tyre Avenue and she talks about some of the problems she has with rentals in her neighborhood. Well, "student rentals," they are creatures of convenience. If they can save walking two blocks, they will move somewhere else. That is why the Main Street properties are so valuable and so in need by these students. They are creatures of convenience. That is how we will get the Tyre Avenues and Choates, Abbotsfords, Cherry Hill and Cherry Hill Manor to be more residential developments because we will take those residents that are renting single family homes and (inaudible). The students who rent who are from New York, north Jersey, they don't rent a fifty year old house. They would much rather rent a brand new apartment with all the conveniences that it has. Please take this into consideration.

Mr. Bowman: We are going to bring it back to the table for further discussion and recommendation.

Ms. Sheedy: There was one question that one of the area residents asked and I don't think we got an answer to it and that was, what is the east side of the building going to look like?

Mr. Lang: All sides of the building will be very similar. We are not going to have the back of the building because we will have windows. It will look exactly the same as that side there except that there may be a few less windows on the first floor because the first floor occupant, sometimes, retailers like storage rooms or something in the back of their space. The upper floors will continue to have all those windows. So, the building will be very, very similar in design and will be similar interiors.

Mr. Dan Hoffman: DCI. Actually, just to expand on what Jeff said. There will be no window on the ground floor on the back side. Because I need to meet a percentage quota being close to the property line for that side of the building. I am only allowed to have a certain percentage of window openings. To get the windows for the apartments that would be required, there will be nothing on the bottom floor. All the windows will be above that, just to expand on what Jeff was saying.

Ms. Brown: The AC units, you are going to put on the roof? Do you have one unit per unit? And, what is the noise level? Is it going to be visible from Tyre Avenue? You said it is not visible from the street, but I wouldn't want to look out my back window and see . . .

Mr. Lang: Actually, what happens is you have what is called split systems and you have a portion of the unit inside and a portion outside. You put it up on the roof and the roof is 35 feet up. You don't put them on the edge, you put them in the middle of the roof and then you don't see them from anywhere unless you happen to be on a building like the Washington House. If you lived in a building like the Washington House, you are going to look on a lot of units, but you can't see anything from the street. Actually, the way the roof is designed there is kind of a pitch to the roof. What happens is that the roof comes and then it goes down and there is a flat area and it all gets put in this flat area so you really can't see it. It is a service area for the mechanical systems.

Ms. Brown: Does this area also keep the noise inside?

Mr. Lang: Oh yes. These units are not noisy from a relative perspective at all. So, you can't hear it from the street. If you go to one of our buildings and you try to hear a unit on the roof, you can't hear it.

Mr. Rob Osborne: This is a follow-up to the question about the windows on the first floor and the back of the units on the first floor. As I understand it, the first floor is retail space. From a delivery and maintenance standpoint for the stores, is that through the front of the building or the back?

Mr. Lang: It will all be through the front. It is just like, if you have been to Pomeroy Station where Ski Bum is and other tenants there, they deliver everything through their front double doors. The back of that building is very similar. As Danny said, what we do is put window panels in there and fill them in with brick so it looks like a window that is filled in with brick. That is the idea. You don't really pay attention to that side of the building because you can't really see it unless you are in the parking lot of the Minute Man and we will have to put landscaping in that three foot area, anyway. So, if you plant a bush and it grows up six or eight feet, you don't even know that there isn't a window there. You look at the other portion of the building that happens to be above that point, and you will see windows. But, all deliveries will be from the front entranceway.

Mr. Osborne: On the drawing there is a grid. There is a reference to a storm tech subsurface?

Mr. Lang: That is Joe's stormwater management plan. I will be less technical than Joe will so you are probably better listening to me. Joe has to submit a stormwater management plan to the Public Works Department and how he is going to handle all the stormwater runoff. When you do a project, you have to meet or exceed the stormwater level so we have to design a project that exceeds the level of runoff that is on the site right now. So, he submits this big huge binder full of stuff to that department and Mike Sistek and Rich Lapointe and the department reviews it and agree that it works and then this has to be designed again and then submitted. It is basically, an underground stormwater detention area. So, all the water that hits anywhere on the site goes through this piece and then eventually into the stormwater runoff system for the City.

Mr. Osborne: Was that in lieu of a retention basin?

Mr. Lang: In downtown areas you don't really put ponds in. So, you either put these kinds of things in or you put sand filters or you put numbers of different techniques that Joe works with.

Mr. Charma: Currently, the State does not want stormwater ponds. That is not the state of the art now. The state of the art is recharge. Everything is recharged.

Mr. Bowman: Anyone else? Hearing none the Chair will entertain a motion for a recommendation.

Ms. Dressel: I am perplexed.

Ms. Sheedy: Mr. Chairman, can we discuss this some more?

Mr. Bowman: Certainly you can. At the table you can.

Ms. Sheedy: On the one hand, it seems like there are some issues with the development plan. On the other hand, it is a commercial piece of property in some form or another and we have to recognize that. It is beautiful now and it is planted and has grass and trees. I, for one, would like to see it that way, but it is not going to stay that way. There are a lot of conforming uses on the front piece of the property that would have a much more negative impact on Main Street. I don't know if it is appropriate to put the application on hold while it gets discussed more so that we can work something out. It seems like there are a lot of

good things about this plan, but there are some issues that have to be ironed out. One of them is with the closest residential property on Tyre Avenue. The residential property on Tyre Avenue closest to Main Street is going to have a three story building looking into their back yard and, presumably, the rest of their house. Those lots are long, but they are not that long. I think we are all sitting here and not making a motion because nobody knows what motion to make.

Mr. Bowman: Basically, here are the options as I see it. We have two recommendations from the Planning and Development Department. One of which is to not recommend approval by City Council; in which case, the developer does have the option of going forward to City Council with a recommendation that is negative on our part. It does allow him to proceed. We could also approve the project with however many conditions we wish to impose. It may take us from now until tomorrow morning to write all those conditions. Of course, there is option #2, presented by the Planning and Development Department; since we can't seem to come to a conclusion is to table it and given the input that has come from both the public and the Commission back to the developer, send him back to the drawing board. In that case, he does have to come back before this body at some point in time with a plan that he would hope and we would hope, through additional discussions with the Planning and Development Department, would get an approval. Those are what I see, unless somebody wants to comment to the contrary, as our potential options are.

Ms. Dressel: I agree with you that those are our options. I guess, the area where my concern is is the length of the building and the number of apartment units. I recognize that it is shorter than others. It is already zoned commercial so something is going to go in there; and unfortunately, the option for residents seeking compensation, would have been for them to purchase the property. That is something that my husband and I have grappled with in lots of situations. If you don't like what is around you, then you have to do something to prevent something else from going in. One thing that I had thought of is that if we were concerned about the green space there, looking at the plan I could foresee eliminating one of the middle rows of parking so that everything would be shifted inward so that there could be a larger buffer there from the Tolomeo residence down to the end of the property. I don't really think that that is necessary in the long run, because it sounds like there is enough of a barrier. I know that the City has talked about the parking situation and whether or not we would put that in as a restriction. Again, I am just talking this out, but I think that our best option would be to recommend approval with a lot of restrictions or to table it with some restrictions so that they could come back. I think that the developer has made a very good presentation and consideration of the property and coming up with different ideas. I think that it is hard to look at this with 20 apartments and think that that is, perhaps, reasonable for that site. If we were down to 15 or 16, that somehow it would just shorten the building that much and, perhaps, eliminate some of the other concerns. I do believe that when we look at apartments, we have to look at it as not just student housing. I teach and there are plenty of single people who need housing, and they are looking for things that are close by. I think we can have a variety of people in the building. And it is nice because it is located close to residential houses. I am just throwing out my ideas.

Mr. Bowman: I am going to keep it on the table. I think all that we can say has been said, quite frankly, at this point.

Ms. Mary Lou McDowell: I agree with Angela. I think, probably, the best thing that we could do right now is to table it. And, the developer has made a good argument about the benefits of it. I do question owner occupied units there. I really don't know if any kind of AC housing would be desirable in that location. There is just an awful lot of information that has come at us that we would need to think about and probably a lot of options that maybe that the developer hasn't considered, although, I know you have considered a lot. I just think, probably, that more time is needed. That is why we are sitting here not making a motion because we have so much information going around in our heads.

Mr. Lang: Mr. Bowman, may I make one quick comment?

Mr. Bowman: I will let you make one.

Mr. Lang: I respectfully understand your grappling with this issue, but a tabling issue for us really doesn't give us any direction because we have already been through a number of scenarios on the site. We have already engineered this twelve different ways. I think one of the concerns I have with the recommendation was fewer number of units. What is fewer number of units. I can't even get anything out of that recommendation. So, if you guys table us, we don't know what to do. You aren't tabling us by saying, go back and design this with twelve units and twelve townhouses. I don't know how to do that. I have already been through so much redesign. It would be nice if you would grapple with that 15 units or 16 units or whatever you felt comfortable with. If the building has to be 30 ft. shorter or 40 ft. shorter or whatever you thought made sense, at least that gives us some direction. And, from a timing perspective for us, tabling is not a good scenario. It would be great if you would say we are comfortable with 16 units and a 30 ft. less off the building. I could see if the building were 30 ft. shorter, it is halfway or more than halfway through their lot and we lose 4 units out of that and make 16 units work. I still have to go back and figure out how to make it work before I get to Council, but at least there is some understanding about where we are going with it.

Ms. Dressel: Can I ask one question of Mr. Lang?

Mr. Bowman: Yes.

Ms. Dressel: How wide, then, is the Kisen property?

Mr. Lang: I believe it is about 60 feet.

Mr. Begleiter: I have to be honest with you. I also walked the property and looked it over and it is nice to see a green piece in the City, but it is not a beautiful piece of property. It has Delaware Avenue on one end with all the noise that Delaware Avenue offers. It has Main Street on the other end of it, which is no prize for any residence of any sort. It has a parking lot on one side and the Transit Hub adjacent to it. It has one commercial business on one side of it and another commercial business on the other side of it and a third commercial business adjacent to it. It does have a nice, somewhat historic value, and is certainly a kind of heartwarming piece of Newark – the Bakery on that property – but this is not the Newark Country Club we are saving here. It isn't. The property has not been well maintained. It hasn't been planted as a luxurious garden in the middle of downtown Newark. The property owners along Tyre Avenue, one of them is a business man who talked extensively tonight about the importance of doing things residential in nature and the importance of encouraging families to move into the neighborhood adjacent to his business and then talked about how valuable it would be to his business to have a street at the Delaware Circle extension or the right-of-way off Delaware Circle. To me, that doesn't cry out for preserving the park or having some gorgeous \$500,000 house on that piece of property. Another property owner adjacent to this property currently has no view of the parkland, if you call it parkland, because of the structure he has erected on his property. Then there are other property owners – I count three – who are adjacent to areas who arguably have at least some portion of their view diminished by the construction on this lot. None of the surrounding pieces here, to me, cry out for the kind of reservation we talked about with the previous issue before the table tonight where it was a truly historic site that needed preservation and exceptions made, so on and so forth. It is a nice piece of property, but it is zoned commercial and everybody on Tyre Avenue knew it was zoned commercial when they bought their properties. They have had the good fortune – and I would have enjoyed that fortune as well – of living adjacent to the property as long as they have when it hasn't been developed in the manner in which it was supposed to be developed. To live between a printing business, a City parking lot and transit hub would be no prize for anyone in Newark. It also wouldn't be such a prize for students to be there.

All of that leads me to the conclusion that developers are proposing a reasonable idea for this difficult piece of property, and they are managing to keep the bakery, at least for some period of time. I don't know how long it will survive, but it certainly is not going to be damaged by this development. If anything, it might be assisted by this development. I agree, however, with some of my colleagues who have said 20 apartments seems like a lot for this spot. I realize the statistics don't justify that comment on my part. As I mentioned very early in this hearing tonight, I would like to see a line drawn approximately where the

adjacent commercial buildings currently suggest a line, and I would like to see that at the northern boundary of the Kisen property, and I would like that to be the end of the residential/retail construction. And for me to say that that amounts to 16 units or 14 units or 12 units, I don't know how to do that. I don't have the expertise to do that. I think that is up to the engineers to figure that out. What can you do in three stories and be creative about it? I have to say that the developers, in this particular case, have put forward a number of very creative proposals in the City of Newark. So, I don't question their word when they say they have jiggered this proposal 100 ways trying this, trying that, turning around, flipping it. I don't doubt that. Honestly, I would like to see some of those options. I would like to see what the drawbacks are of some of those. I would like to see what would be wrong with splitting up the residential units, put the retail in the front, put the residences in a building maybe in the middle of the lot, or something like that. I don't think they would want to live on Delaware Avenue either, but their colleagues do on the opposite side of Delaware Avenue. So, maybe I am totally wrong about that.

All of that leads me to suggest that since nobody is going to make a motion, I will, at least for the purposes of having a vote, so we can see where we go with this, I am going to suggest that we recommend that we table consideration of this proposal. Not because we disagree with the development of the proposal as a commercial development; because we can't; not because we want to preserve all of the trees on the property, although many of them have been preserved in this proposal; but because I would like to see what would happen if you reduce the size of the building by approximately the amount suggested. Maybe somebody else on the Commission has the expertise or maybe, Maureen you want to offer your guidance on that. If we reduce the size of the building by the amount I have suggested, fit however many apartments you think you can fit in there to make it economically feasible, and include the retail development. I am not a developer. I don't know how to do these things, but what about the possibility of incorporating the Bing's Bakery into whatever building you establish, keeping the façade.

Mr. Lang: We have already done that.

Mr. Begleiter: Have you already done that option and it doesn't work. You probably have done all these. You see, we are at a loss. These things have been done. I would like to see those.

Ms. Dressel: Because the developer has requested that we make a recommendation one way or the other, would it be better to approve or reject, but approve with the qualifications that we would like to see it reduced by 60 ft. and we would like to see less than 16 apartments on this property, and discussion with the City about cooperative parking with City parking lot #5. Would that be agreeable as opposed to tabling it?

Mr. Begleiter: This is why I asked Maureen the question early in the meeting tonight, if we table, we get a chance to look at this proposal again. If we accept or reject, then we can make the recommendations. Anything we do, anyway, is just a recommendation. The developer knows that. The citizens know that. We are not deciding what happens with this piece of property. We are only making recommendations, but if we accept or reject tonight, we don't see it again. Maybe some of you might say that is a good thing. I don't want to see this again. I don't want to be bothered by it again, but if we want to get another look at it and have an opportunity to say, yes, this is a good idea, or here is a little thing that needs tweaking, then we have to table and we have to ask that it be brought back to our attention. I think I would go along with the idea. I don't know if I would say less than 16, but maybe 16 or fewer.

Ms. Feeney Roser: I just wanted to note – and Jeff you can correct me if I am wrong –I think what you said was that you didn't want them to table you without direction; not that you didn't want to be tabled at all.

Mr. Lang: If I get tabled, I have a very time-sensitive contractual relationship with the seller. So, if I get tabled, I, basically, fall out of contract with him because I can't meet the rest of my time schedule through my Council process.

Mr. Begleiter: Okay, but that is not our problem.

Mr. Lang: It is not your problem, but it is a fact of life, just like anything is. I have been to some meetings where people have said they have to leave because I have to fly out tomorrow. It is not like the project is going to change. The rendering is not going to change. The site is not going to change except that you are going to have a chopped up building. The cooperation with the City and lot #5 is going to be dictated more by Council direction; that is what they are going to tell me. They are going to say, okay, we will approve 16 units if we work out some deal so the parking can be used or shared, which is part of the conversations we have had off and on with the Planning and Development Department. If the elevation was bad and the building design was just totally ridiculous, and the configuration of everything, but all you are doing is thinking about chopping off 60 feet.

Mr. Begleiter: What I was saying was that the residential portion of the property seems large to me, and that I would be happier with it being smaller, and that would accommodate at least some of the concerns of only one or two of the adjacent residential properties who do have that concern.

Mr. Lang: I agree with you, but of the four people that are actually impacted, two of them are here. One of them really doesn't have a view and the other one is a business. The one person who is most impacted by this project isn't even here. The frustrating part, when you are going through this process, is where is the person that is most negatively impacted? But, we actually started this months ago. We could go through that, but we can't go through that at this process because if we gave you ten options, you might pick one.

Mr. Osborne: I have to say that I have to agree with Ralph's comment about taking off 30 ft. or whatever it is to make the back line up with the end of the Shamrock Printing property. But, clarify for me, the end of the property of Shamrock is not the end of the building of Shamrock is it? The end of the building of Shamrock is further toward Main Street. So, I was almost agreeing with you, Ralph. There is some symmetry here between the two properties where if we have the line at the building; but, if it is just the property line, I am having a little more difficult time saying, I agree with cutting off there.

Ms. Dressel: So, you would rather keep it where it is now?

Mr. Osborne: I have a tougher time with the logic of cutting it off at the property line.

Mr. Begleiter: The property line is a commercial property line. What is adjacent is a residential property. That was my logic.

Mr. Osborne: I feel like there has been a lot of input tonight. It is part of the public hearing process for the developers to hear that. I am not feeling like we are at a point where we feel comfortable recommending it to go forward. The developer has the option of going to Council anyway.

Mr. Lang: Do I have the option if you table me?

Mr. Begleiter: If we table it, there is no option. We can reject it or we can approve it.

Mr. Lang: I would rather be rejected than tabled.

Mr. Osborne: Mr. Chairman: I see Mr. Locke motioning and I am interested in what that is about.

Mr. Locke: Jeff expanded a little bit on it. Contractually we are under a very tight timeframe. You heard Mr. White's comment. There is another buyer waiting in the wings here.

Mr. Osborne: And, they would have to go through the same process.

Mr. Begleiter: That is right. They will be subject to the same process.

(inaudible)

Mr. Locke: That is right. That is why Jeff said we would rather have you reject it and we will take your comments and then go forward to City Council.

(inaudible)

Mr. Bowman: Madam, I am sorry the public comment portion has ended. It is back to our table and we are questioning the developer.

Mr. Begleiter: Mr. Chairman, a question for Maureen? Is there a distinction in the way other proposals for this site would be handled? Would they be handled differently somehow if they were a hotel proposal?

Ms. Feeney Roser: It would be a subdivision. It would come to you as a major subdivision. It wouldn't be a rezoning.

Mr. Begleiter: But, it would still come before the Planning Commission. Is there some kind of proposal that would not?

Mr. Lang: Can't you do BC. Anything that is permitted is just a building permit.

Ms. Feeney Roser: They could do a commercial building with one or two tenants. For more than two uses on a lot, you need subdivision.

Mr. Lang: But, if I came in with a hotel, I wouldn't need a subdivision.

Ms. Feeney Roser: You would need a special use permit for a hotel in BC.

Mr. Lang: I could build a hotel and pave the whole thing. I could turn it into a big parking lot and wouldn't have to do anything.

Ms. Feeney Roser: You would have to meet the parking requirements. I think that is going to be very difficult on this site.

Mr. Lang: I'm just saying in theory, though, in BC tons of things are permitted with just a building permit.

Ms. Feeney Roser: They are actually listed in the report – what is permitted and what is permitted with a special use permit.

Mr. Bowman: I think at this point in time we need a motion.

Mr. Begleiter: If I move to table, you say there is no discussion if there is a second. I will make a formal motion to table, but I want it understand that if I don't hear a second, I understand that the Commission wants to do something else.

Mr. White: The applicant is under agreement. If it is tabled, he will go out of contract. I report to three trustees, and these trustees, their charge is to liquidate this property to be part of an estate sale.

Mr. Bowman: We hear that, Sir, but that can't be part and parcel, ultimately, to our decision.

Mr. White: These trustees could say, move on to something that is properly zoned.

Mr. Bowman: We understand that. We fully understand that.

MOTION BY BEGLEITER, SECONDED BY OSBORNE, TO TABLE CONSIDERATION OF 257 E. MAIN STREET REZONING AS SHOWN IN THE PROPOSAL BEFORE US TONIGHT, WITH A REQUEST THAT THE DEVELOPER RETURN TO THE COMMISSION WITH A PLAN FOR 16 OR FEWER RESIDENTIAL UNITS IN A MIXED USE PROPOSAL AS THEY HAVE MADE. THE PROPOSAL

SHOULD BE MORE CREATIVE AND UTILIZING THE DELAWARE CIRCLE RIGHT-OF-WAY TO PROVIDE THE SECOND ACCESS THAT THE FIRE DEPARTMENT IS WORRIED ABOUT.

Mr. Bowman: Is there a second?

Ms. Sheedy: Early on, you talked about including asking the developer to come back with a plan that brings the building back 60 ft. or so. Is the intent of your direction to the builder that making it 16 apartments would also accomplish that?

Mr. Begleiter: No, my intent is not that, and I heard your discussion about parkland on Main Street, and I think that would be dandy, too. I like the Academy building also, but that isn't what the City has decided that they want Main Street to look like. And, the developer is following those rules.

Ms. Sheedy: Is the intent just limiting the number of apartments or limiting the size of the building?

Mr. Begleiter: It is both. Limiting the number of units. In my view the intention of that is to limit the extent of the partying or whatever goes on in a rental building like this. And, because the access is limited also to limit the amount of traffic in and out of that facility onto Main Street since there is only one access at this point, right across the street from the Newark Shopping Center.

Ms. Sheedy: Let me suggest to you an apartment building that is not totally devoted to students. If we directed the developer to reduce the size of the building but didn't change the number of apartments, and left that up to the developer, whether he is going to reduce the number of apartments or make some smaller apartment, that would potentially, if the developer felt there was a market for it, allow for some apartments to be less than three bedrooms. Three bedroom apartments are more likely going to be rented to groups of students. A one or a two bedroom apartment is more likely to be rented to a young single person.

Mr. Begleiter: What is the difference in a young single person or a student?

Ms. Sheedy: A younger single person is one person to an apartment and students are one person to a bedroom or more. It would make it more probable that other people would rent it.

Mr. Begleiter: I will tell you what, I will withdraw my motion and allow you to make one.

Ms. Sheedy: I was going to say, we could amend your motion to reduce the size of the building but not limit the number of apartments.

Ms. McDowell: It sounds to me like if we table it, we won't see it again.

Mr. Lang: I have a clarification. If we reduce the size of the building, what will be do with all this extra parking. We already have 31 extra spaces. So, if we make the building smaller, we are going to have 55 extra parking spaces. So, do you want me to go into the parking authority? Am I supposed to build a three-story office building in the back? We did consider that. We have a design for that.

Mr. Bowman: Let me keep this up here at the table and see if we can get this resolved.

Mr. Osborne: I happen to like what Ralph has suggested about incorporating Delaware Circle. It is already there. Doing something with that to create a shop or something back there. It just seems like that could be a dimension of that that could be better.

Mr. Bowman: Are you going to leave your motion on the table?

Mr. Begleiter: Yes.

Mr. Bowman: All in favor signify by saying Aye:

VOTE: 2-5

AYE: BEGLEITER, OSBORNE

NAY: BOWMAN, BROWN, DRESSEL, McDOWELL, SHEEDY

MOTION FAILS

Mr. Bowman: The Chair doesn't normally do this, but I am going to move that we recommend that the City Council not approve the 257 E. Main Street rezoning as shown on the Planning and Development Department Exhibit A, dated August 5, 2008 nor the major subdivision and special use permit plan shown on Landmark Engineering plan, dated March 26, 2008.

I am making that motion because the City Council does have the option to refer it back to the Planning Commission. I believe that is correct.

Ms. Feeney Roser: That is true.

Mr. Bowman: If City Council is not happy with what they see, they can send it back. They will have the option of certainly seeing the minutes and all the comments from this meeting. Hopefully, they do read them on occasion. My motion is recommendation #1 from the Planning and Development Department.

MOTION BY BOWMAN, SECONDED BY MCDOWELL, THE PLANNING COMMISSION RECOMMENDS:

- A. THAT CITY COUNCIL NOT APPROVE THE 257 EAST MAIN STREET REZONING AS SHOWN ON PLANNING & DEVELOPMENT DEPARTMENT EXHIBIT A, DATED AUGUST 5, 2008, NOR THE MAJOR SUBDIVISION AND SPECIAL USE PERMIT, AS SHOWN ON THE LANDMARK ENGINEERING, INC., PLAN DATED MARCH 26, 2008.

Mr. Begleiter: Is there any discussion on this one?

Mr. Bowman: Yes, there is.

Mr. Begleiter: Maureen, what are the procedural implications here? What is the timing of this? If we reject it, does it go to Council right away, or it doesn't go at all, or it goes at their option?

Ms. Feeney Roser: It will go to them as soon as the minutes are done and our cover report to explain what happened tonight is prepared, then it has to be scheduled, depending on what kinds of advertising requirements there are.

Mr. Begleiter: It doesn't go to Council automatically, does it?

Ms. Feeney Roser: If the developer requests it, it goes.

Mr. Begleiter: So, they could make changes if they wanted to between now and that time.

Ms. Feeney Roser: Right.

Ms. Dressel: I think we have given a lot of feedback to the developer on what we are interested in seeing, and I hope that through what we have talked about tonight that it is sufficient.

Mr. Bowman: The thing I might also add is that the members of the public do have, when this becomes part of the agenda for City Council, the right to show up at the Council meeting and voice your opinions there, which I would encourage you to do.

VOTE: 7-0
AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,
OSBORNE, SHEEDY
NAY: NONE

MOTION PASSED UNANIMOUSLY

Meeting adjourned at 11:45 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission